

Springfield, MA Appeal to the Federal Communications Commission

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**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 1A



Schools and Libraries Division

Administrator's Decision on Appeal – Funding Year 2004-2005

April 26, 2010

RECEIVED

APR 29 2010

CITY OF SPRINGFIELD
Law Department

Kathleen T. Breck
Deputy City Solicitor
City of Springfield Law Department
36 Court Street, Room 210
Springfield, MA 01103

RE:	Applicant Name:	SPRINGFIELD MASS. SCHOOL DISTRICT
	Billed Entity Number:	120089
	Form 471 Application No.:	433768
	Funding Request Number(s):	1207981
	Your Correspondence Dated:	November 7, 2008

Dear Ms. Breck:

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Commitment Adjustment Letter ("COMAD") to Achieve Telecom Network of Massachusetts, LLC ("Achieve") and Springfield, Massachusetts School District ("Springfield") for Funding Year 2004 for Application Number 433768. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1207981

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, Springfield makes several arguments as to why SLD erred in its decision to issue a COMAD and seek recovery of funds that have been improperly disbursed in Funding Year 2004. First, Springfield argues that it had no knowledge of any partnership between Achieve and United States Distance Learning Association ("USDLA") and was not aware that Achieve solicited donations on behalf of USDLA.

- SLD is aware that Springfield maintains that it had no knowledge of any partnership between Achieve and USDLA and that Springfield did not know Achieve solicited funds on behalf of USDLA. However, intent is not a relevant factor when determining whether program rules were violated and SLD routinely test applicants and service providers' statements and certifications in order to protect program integrity. In this case, information about the partnership between Achieve and USDLA was publicly available on USDLA's web site. USDLA's 2004 annual report states that USDLA formed a partnership with Achieve in order to pursue E-Rate K-12 monetary allocation. USDLA's 2006 and 2007 annual reports explain that USDLA's partnership with Achieve is providing revenue for the association and that the grant program that funds distance learning projects through E-Rate should be continued.¹ It is clear from USDLA's annual reports that the partnership with Achieve was beneficial to USDLA and that it was improving USDLA's revenue flow.²

Further, any statements that a partnership does not exist between Achieve and USDLA conflict with statements that were obtained from USDLA during the Special Compliance Review. In response to an information request, USDLA CEO John G. Flores specifically named Achieve as one of the members of USDLA and noted that USDLA was "fortunate that many companies who have an interest in e rate opportunities with school districts across the country are members of USDLA."³ Dr. Flores also commented that as USDLA "solicit[s] donations from philanthropic groups or private donations, [it] work[s] with [school] districts attempting to support what the e rate monies allow them to do. Achieve as a Massachusetts based company has taken advantage of this opportunity." *Id.* The information received from Dr. Flores directly conflicts with Ms. Jackson's statements that "Achieve is not a member of USDLA."⁴

The information regarding USDLA's partnership with Achieve is publicly available. Thus, Springfield could have learned about the partnership if it had conducted research on USDLA before applying for and accepting a grant from the organization. The fact that Springfield was unaware of this information is not relevant since intent is not a factor for determining whether program rules were violated.

¹ All three reports are available on USDLA's web site at www.usdla.org.

² USDLA's Form 990s appear to confirm USDLA's comments that the partnership with Achieve was successful and was generating revenues for the association. For the years 2002 through 2005, USDLA reported a shortfall at the end of the year on its Form 990s filed with the IRS. However, in 2006 and 2007, USDLA reported a positive balance at the end of the year. (Copies of USDLA's Form 990s are available at <http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Form990&EIN=680150292&Year=2007>.)

³ Apr. 3, 2008 E-Mail from Dr. John Flores (USDLA) to Jennifer Baumann (USAC-SCR).

⁴ July 17, 2008 Letter from Joy Jackson (Achieve) to Jennifer Cerciello (USAC-SCR).

- Springfield further argues that it was not aware that the USDLA grants were “specifically designated” for schools that selected Achieve as a service provider. In support of its argument, Springfield explains that the March 18, 2004 and the June 27, 2005 USDLA letters awarding the grant to Springfield explicitly stated that the grant was not contingent upon the selection of a specific vendor.
- SLD is aware that Springfield maintains that it had no knowledge that the USDLA grants were specifically designated for Achieve’s services. Further, SLD agrees that in the initial USDLA letters awarding the grant to Springfield, the letters included language that said the grant was not dependent on the selection of a particular vendor. However, the inclusion of that statement does not refute the documentation in SLD records and in the submitted appeal papers that show the USDLA grants were specifically earmarked for services provided by Achieve. Notably, all of the subsequent USDLA letters reaffirming the grant to Springfield referred to the project as the “AchieveXpress Telecommunications distance learning project,”⁵ despite the fact that Springfield had titled it the “Springfield Public School District Digital Divide Project” in its grant application.⁶ The fact that USDLA appears to use a standard form letter that refers to these projects as the “AchieveXpress Telecommunications distance learning project” instead using the actual project’s title adds further support to the claim that the USDLA grants were earmarked for Achieve’s services. To date, Springfield, Achieve, and USDLA have not provided any evidence to refute this determination.
- Springfield next argues that Achieve did not market its services as a “no-cost” service, nor did Achieve “guarantee” that USDLA would award grants to Springfield if Achieve was selected as the service provider. Springfield also states that it did not receive any “rebates” from Achieve. Springfield admits that Achieve informed them about the grants from USDLA that could cover their non-discounted portion. However, Springfield states that Achieve also stated there were other sources for potential grants. Springfield maintains that its personnel completed the grant applications and worked directly with USDLA personnel to obtain the USDLA grants. Springfield reiterates that the USDLA grants were not tied to the selection of any specific vendor.
- SLD disagrees with the assertion that Achieve did not guarantee USDLA grants to applicants who selected Achieve’s services and that the USDLA grants were not earmarked for Achieve’s services. SLD questioned Achieve and USDLA about whether USDLA grants were provided to

⁵ See, e.g., Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (affirming award of grant for the “AchieveXpress Telecommunications distance learning project”); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (same).

⁶ Feb. 14, 2005 USDLA grant application; Jan. 17, 2007 USDLA grant application.

other applicants who did not select Achieve as their service provider. To date, neither party has responded to the question or provided evidence to show that the USDLA grants were not tied to Achieve's services.

SLD also notes that the technology services contract between Springfield and Achieve contain specific provisions stating that Springfield is not liable for any of the costs associated with Achieve's services and that the costs would be covered in full through E-Rate funding and USDLA grants. See Oct. 25, 2005 Springfield/Achieve Technology Services Contract at § 3A ("It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement . . ."); Aug. 3, 2007 Springfield/Achieve Technology Services Contract at § 3A (same). The contract language further supports SLD's finding that achieve provided Springfield with fully funded services.

Finally, there is also evidence that USDLA did not provide the funding for the grant awarded to Springfield. Springfield was provided a three-year grant, with \$239,127 being awarded for Funding Year 2004.⁷ USAC has reviewed the IRS Form 990 that was filed by USDLA for 2004. Line Item 22, under the "Statement of Functional Expenses" is where USDLA is required to report the amount it has provided in grants for that year. USDLA's 2004 Form 990, Line Item 22 is blank and USDLA does not claim that any of its revenues was used to provide grants. It should also be noted that the one-year grant to Springfield for Funding Year 2004 was more than one half of USDLA's reported revenues for 2004.⁸ Furthermore, USDLA's revenues did not cover its expenses for 2004 and it reported a shortfall of \$22,032. *Id.* at Line Item 21. It does not appear from the information reported by USDLA to the IRS that USDLA had the funding to cover the \$239,127 grant that was awarded to Springfield for Funding Year 2004. In light of this evidence, it is questionable whether USDLA provided the funding to Springfield.

- Springfield next argues that Achieve never waived its non-discounted portion of costs. Springfield reiterates that the USDLA grant was used to cover its costs and that program rules allow applicants to use such grants to cover their non-discounted costs.
- SLD agrees that grants and donations are permissible sources of resources that an applicant may use to demonstrate that funds exist to pay the applicant's non-discounted portion of costs and that service providers are allowed to assist applicants in locating such grants. However, the Special Compliance Review team questioned Achieve and USDLA regarding whether USDLA grants were provided to other E-Rate applicants who did

⁷ See Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield).

⁸ USDLA's reported revenues to the IRS for 2004 was \$462,510. See USDLA 2004 Form 990, available at http://207.153.189.83/EINS/680150292/680150292_2004_01eb0132.PDF.

not select Achieve as their service provider. To date, neither party has provided any documentation to refute SLD's finding that the USDLA grants were only provided to E-Rate applicants who selected Achieve's services. In addition, the August 2005, February 2007, and January 2008 award letters from USDLA to Springfield specifically state that the grant was to cover "Achieve Xpress Telecommunications distance learning project" despite the fact Springfield had titled its project the "Springfield Digital Divide Project" in its grant application.⁹ This evidence supports SLD's finding that the USDLA grants were earmarked for Achieve's services and Springfield did not pay its non-discounted portion of costs.

- FCC rules require applicants to pay the non-discounted portion of the costs. FCC adopted the Federal-State Joint Board on Universal Service's recommendation to promulgate rules that provided universal support to eligible schools and libraries through a percentage discount system rather than allowing free services or block grants to be used to cover the schools and libraries' costs.¹⁰ FCC explained that "requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively."¹¹ In 2003, FCC clarified and codified this restriction, explaining that the rules "require[] that an entity must pay the entire undiscounted portion of any services it receives through the libraries and schools program."¹² After a thorough review of the evidence in this matter, it is clear that Springfield failed to pay its non-discounted portion of service because Achieve provided its services at no-cost to Springfield.
- Springfield argues that it should not be held liable for any program violations because it has complied with FCC requirements and disclosed the use of USDLA grants to SLD.

⁹ See Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Jan. 25, 2008 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield).

¹⁰ *Federal-State Joint Board on Universal Service*, Report & Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9035-36, FCC 97-157, ¶ 492 (1997) ("*Universal Service Order*").

¹¹ *Id.*

¹² *Schools & Libraries Universal Service Support Mechanism*, Third Report & Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 03-323, ¶ 41 (2003) ("*Third Report & Order*"). This Order codified 47 C.F.R. § 54.523, which states "An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts." See also, *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15831, FCC 04-190, ¶ 68 (2004) ("*Fifth Report and Order*") (clarifying and codifying the requirement that schools and libraries certify that they have secured access to the resources necessary to effectively use the products and services purchased with universal discounts, including the ability to pay the non-discounted portion).

- SLD finds that both Achieve and Springfield are responsible for these rule violations because Springfield was not able to conduct a fair and open competitive bidding process based on Achieve's no-cost guarantee and Achieve gained an unfair competitive advantage by guaranteeing USDLA grants designed to cover Springfield's non-discounted portion of costs of Achieve's services.

FCC rules require a fair and open competitive bidding process. Under the Commission's rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, "direct involvement in an application process by a service provider would thwart the competitive bidding process."¹³ Communications between applicants and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with the others, and all bidders know what is required of them.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the service provider prior to the competitive bidding that would unfairly influence the outcome of a completion or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.¹⁴

¹³ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, 19 FCC Rcd 6858, ¶ 60 (2003). See also, *Request for Review of the Decision of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032-33, ¶ 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by SEND Technologies LLC, Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 07-1270 (2007); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 08-449 (2008).

¹⁴ See www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

The competitive bidding process in this matter was not fair or open because of Achieve offering to provide fully funded services by using USDLA grants to cover Springfield's share of costs.

- SLD has determined that program rule violations have occurred and as a result this appeal is denied in full. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or disbursements of funds were inconsistent with program rules.¹⁵ In particular, FCC rules require USAC to "recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of [FCC's] rules and amplified in related Commission orders."¹⁶ Moreover, FCC rules require "that all funds disbursed should be recovered for any funding request in which the beneficiary failed to pay its non-discounted share."¹⁷

For appeals that have been denied, partially approved, dismissed or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We also thank you for your continued support, patience and cooperation during this appeal process.

Schools and Libraries Division
Universal Service Administrative Company

¹⁵ See *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Schools & Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report & Order, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Rcd 15252 (2004) ("*Schools & Libraries Fourth Report*").

¹⁶ *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, ¶ 21 (2004) ("*Fifth Report & Order*").

¹⁷ *Id.* at ¶ 24.

cc: Ms. Joy Jackson
Achieve Telecom Network of MA., LLC
40 Shawmut Road, Suite 200
Canton, MA 02021

Dr. Joseph Burke
Mr. Robert G. Howell
Springfield Public School District
P.O. Box 1410
195 State Street
Springfield, MA 01102-1410

Ms. Melissa M. Shea
Sullivan, Hayes & Quinn
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Springfield, MA 01144

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 1B



Schools and Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

RECEIVED

April 26, 2010

APR 28 2010

Kathleen T. Breck
Deputy City Solicitor
City of Springfield Law Department
36 Court Street, Room 210
Springfield, MA 01103

**CITY OF SPRINGFIELD
Law Department**

RE:	Applicant Name:	SPRINGFIELD MASS. SCHOOL DISTRICT
	Billed Entity Number:	120089
	Form 471 Application No.:	487623
	Funding Request Number(s):	1352672
	Your Correspondence Dated:	November 7, 2008

Dear Ms. Breck:

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Commitment Adjustment Letter ("COMAD") to Achieve Telecom Network of Massachusetts, LLC ("Achieve") and Springfield, Massachusetts School District ("Springfield") for Funding Year 2005 for Application Number 487623. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1352672

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, Springfield makes several arguments as to why SLD erred in its decision to issue a COMAD and seek recovery of funds that have been improperly disbursed in Funding Year 2005. First, Springfield argues that it had no knowledge of any partnership between Achieve and United States Distance Learning Association ("USDLA") and was not aware that Achieve solicited donations on behalf of USDLA.

- SLD is aware that Springfield maintains that it had no knowledge of any partnership between Achieve and USDLA and that Springfield did not know Achieve solicited funds on behalf of USDLA. However, intent is not a relevant factor when determining whether program rules were violated and SLD routinely test applicants and service providers' statements and certifications in order to protect program integrity. In this case, information about the partnership between Achieve and USDLA was publicly available on USDLA's web site. USDLA's 2004 annual report states that USDLA formed a partnership with Achieve in order to pursue E-Rate K-12 monetary allocation. USDLA's 2006 and 2007 annual reports explain that USDLA's partnership with Achieve is providing revenue for the association and that the grant program that funds distance learning projects through E-Rate should be continued.¹ It is clear from USDLA's annual reports that the partnership with Achieve was beneficial to USDLA and that it was improving USDLA's revenue flow.²

Further, any statements that a partnership does not exist between Achieve and USDLA conflict with statements that were obtained from USDLA during the Special Compliance Review. In response to an information request, USDLA CEO John G. Flores specifically named Achieve as one of the members of USDLA and noted that USDLA was "fortunate that many companies who have an interest in e rate opportunities with school districts across the country are members of USDLA."³ Dr. Flores also commented that as USDLA "solicit[s] donations from philanthropic groups or private donations, [it] work[s] with [school] districts attempting to support what the e rate monies allow them to do. Achieve as a Massachusetts based company has taken advantage of this opportunity." *Id.* The information received from Dr. Flores directly conflicts with Ms. Jackson's statements that "Achieve is not a member of USDLA."⁴

The information regarding USDLA's partnership with Achieve is publicly available. Thus, Springfield could have learned about the partnership if it had conducted research on USDLA before applying for and accepting a grant from the organization. The fact that Springfield was unaware of this information is not relevant since intent is not a factor for determining whether program rules were violated.

¹ All three reports are available on USDLA's web site at www.usdla.org.

² USDLA's Form 990s appear to confirm USDLA's comments that the partnership with Achieve was successful and was generating revenues for the association. For the years 2002 through 2005, USDLA reported a shortfall at the end of the year on its Form 990s filed with the IRS. However, in 2006 and 2007, USDLA reported a positive balance at the end of the year. (Copies of USDLA's Form 990s are available at <http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Form990&EIN=680150292&Year=2007>.)

³ Apr. 3, 2008 E-Mail from Dr. John Flores (USDLA) to Jennifer Baumann (USAC-SCR).

⁴ July 17, 2008 Letter from Joy Jackson (Achieve) to Jennifer Cerciello (USAC-SCR).

- Springfield further argues that it was not aware that the USDLA grants were “specifically designated” for schools that selected Achieve as a service provider. In support of its argument, Springfield explains that the March 18, 2004 and the June 27, 2005 USDLA letters awarding the grant to Springfield explicitly stated that the grant was not contingent upon the selection of a specific vendor.
- SLD is aware that Springfield maintains that it had no knowledge that the USDLA grants were specifically designated for Achieve’s services. Further, SLD agrees that in the initial USDLA letters awarding the grant to Springfield, the letters included language that said the grant was not dependent on the selection of a particular vendor. However, the inclusion of that statement does not refute the documentation in SLD records and in the submitted appeal papers that show the USDLA grants were specifically earmarked for services provided by Achieve. Notably, all of the subsequent USDLA letters reaffirming the grant to Springfield referred to the project as the “AchieveXpress Telecommunications distance learning project,”⁵ despite the fact that Springfield had titled it the “Springfield Public School District Digital Divide Project” in its grant application.⁶ The fact that USDLA appears to use a standard form letter that refers to these projects as the “AchieveXpress Telecommunications distance learning project” instead using the actual project’s title further supports SLD’s finding that the USDLA grants are earmarked for Achieve’s services. To date, Springfield, Achieve, and USDLA have not provided any evidence to refute this determination.
- Springfield next argues that Achieve did not market its services as a “no-cost” service, nor did Achieve “guarantee” that USDLA would award grants to Springfield if Achieve was selected as the service provider. Springfield also states that it did not receive any “rebates” from Achieve. Springfield admits that Achieve informed them about the grants from USDLA that could cover their non-discounted portion. However, Springfield states that Achieve also stated there were other sources for potential grants. Springfield maintains that its personnel completed the grant applications and worked directly with USDLA personnel to obtain the USDLA grants. Springfield reiterates that the USDLA grants were not tied to the selection of any specific vendor.
- SLD disagrees with the assertion that Achieve did not guarantee USDLA grants to applicants who selected Achieve’s services and that the USDLA grants were not earmarked for Achieve’s services. SLD questioned Achieve and USDLA about whether USDLA grants were provided to

⁵ See, e.g., Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (affirming award of grant for the “AchieveXpress Telecommunications distance learning project”); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (same).

⁶ Feb. 14, 2005 USDLA grant application; Jan. 17, 2007 USDLA grant application.

other applicants who did not select Achieve as their service provider. To date, neither party has responded to the question or provided evidence to show that the USDLA grants were not tied to Achieve's services.

SLD also notes that the technology services contract between Springfield and Achieve contain specific provisions stating that Springfield is not liable for any of the costs associated with Achieve's services and that the costs would be covered in full through E-Rate funding and USDLA grants. *See* Oct. 25, 2005 Springfield/Achieve Technology Services Contract at § 3A ("It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement . . ."); Aug. 3, 2007 Springfield/Achieve Technology Services Contract at § 3A (same). The contract language further supports SLD's finding that achieve provided Springfield with fully funded services.

Finally, there is also evidence that USDLA did not provide the funding for the grant awarded to Springfield. Springfield was awarded a three-year grant, with \$238,140 being awarded for Funding Year 2005.⁷ USAC has reviewed the IRS Form 990 that was filed by USDLA for 2005. Line Item 22, under the "Statement of Functional Expenses" is where USDLA is required to report the amount it has provided in grants for that year. USDLA's 2005 Form 990, Line Item 22 is blank and USDLA does not claim that any of its revenues was used to provide grants. It should also be noted that the one-year grant to Springfield for Funding Year 2005 was more than one third of USDLA's reported revenues for 2005.⁸ Further, USDLA's revenues did not cover its expenses for 2005 and it reported a shortfall of \$20,955. *Id.* at Line Item 21. It does not appear from the information reported by USDLA to the IRS that USDLA had the funding to cover the \$238,140 grant that was awarded to Springfield in 2005. In light of this evidence, it is questionable whether USDLA provided the grant to Springfield.

- Springfield next argues that Achieve never waived its non-discounted portion of costs. Springfield reiterates that the USDLA grant was used to cover its costs and that program rules allow applicants to use such grants to cover their non-discounted costs.
- SLD agrees that grants and donations are permissible sources of resources that an applicant may use to demonstrate that funds exist to pay the applicant's non-discounted portion of costs and that service providers are allowed to assist applicants in locating such grants. However, the Special

⁷ *See* Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (noting award was for 36 months at \$19,845/month); *see also* June 1, 2006 E-Mail from R. Hamel (Springfield) to J. Landsman (USAC) (affirming that the school district received a three-year grant from USDLA).

⁸ USDLA's reported revenues to the IRS for 2005 was \$619,040. *See* USDLA 2005 Form 990, available at http://207.153.189.83/EINS/680150292/680150292_2005_02D7C486.PDF.

Compliance Review team questioned Achieve and USDLA regarding whether USDLA grants were provided to other E-Rate applicants who did not select Achieve as their service provider. To date, neither party has provided any documentation to refute SLD's finding that the USDLA grants were only provided to E-Rate applicants who selected Achieve's services. In addition, the August 2005, February 2007, and January 2008 award letters from USDLA to Springfield specifically state that the grant was to cover "Achieve Xpress Telecommunications distance learning project" despite the fact Springfield had titled its project the "Springfield Digital Divide Project" in its grant application.⁹ This evidence supports SLD's finding that the USDLA grants were earmarked for Achieve's services and Springfield did not pay its non-discounted portion of costs.

- FCC rules require applicants to pay the non-discounted portion of the costs. FCC adopted the Federal-State Joint Board on Universal Service's recommendation to promulgate rules that provided universal support to eligible schools and libraries through a percentage discount system rather than allowing free services or block grants to be used to cover the schools and libraries' costs.¹⁰ FCC explained that "requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively."¹¹ In 2003, FCC clarified and codified this restriction, explaining that the rules "require[] that an entity must pay the entire undiscounted portion of any services it receives through the libraries and schools program."¹² After a thorough review of the evidence in this matter, it is clear that Springfield failed to pay its non-discounted portion of service because Achieve provided its services at no-cost to Springfield.
- Springfield argues that it should not be held liable for any program violations because it has complied with FCC requirements and disclosed the use of USDLA grants to SLD.

⁹ See Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Jan. 25, 2008 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield).

¹⁰ *Federal-State Joint Board on Universal Service*, Report & Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9035-36, FCC 97-157, ¶ 492 (1997) ("*Universal Service Order*").

¹¹ *Id.*

¹² *Schools & Libraries Universal Service Support Mechanism*, Third Report & Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 03-323, ¶ 41 (2003) ("*Third Report & Order*"). This Order codified 47 C.F.R. § 54.523, which states "An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts." See also, *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15831, FCC 04-190, ¶ 68 (2004) ("*Fifth Report and Order*") (clarifying and codifying the requirement that schools and libraries certify that they have secured access to the resources necessary to effectively use the products and services purchased with universal discounts, including the ability to pay the non-discounted portion).

- SLD finds that both Achieve and Springfield are responsible for these rule violations because Springfield was not able to conduct a fair and open competitive bidding process based on Achieve's no-cost guarantee and Achieve gained an unfair competitive advantage by guaranteeing USDLA grants designed to cover Springfield's non-discounted portion of costs of Achieve's services.

FCC rules require a fair and open competitive bidding process. Under the Commission's rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, "direct involvement in an application process by a service provider would thwart the competitive bidding process."¹³ Communications between applicants and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with the others, and all bidders know what is required of them.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the service provider prior to the competitive bidding that would unfairly influence the outcome of a completion or would furnish the service provider with "inside"

¹³ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, 19 FCC Rcd 6858, ¶ 60 (2003). See also, *Request for Review of the Decision of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032-33, ¶ 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by SEND Technologies LLC, Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 07-1270 (2007); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 08-449 (2008).

information or allow it to unfairly compete in any way.¹⁴

The competitive bidding process in this matter was not fair or open because of Achieve offering to provide fully funded services by using USDLA's grants to cover Springfield's share of costs.

- SLD has determined that program rule violations have occurred and as a result this appeal is denied in full. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or disbursements of funds were inconsistent with program rules.¹⁵ In particular, FCC rules require USAC to "recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of [FCC's] rules and amplified in related Commission orders."¹⁶ Moreover, FCC rules require "that all funds disbursed should be recovered for any funding request in which the beneficiary failed to pay its non-discounted share."¹⁷

For appeals that have been denied, partially approved, dismissed or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We also thank you for your continued support, patience and cooperation during this appeal process.

Schools and Libraries Division
Universal Service Administrative Company

¹⁴ See www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

¹⁵ See *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Schools & Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report & Order, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Rcd 15252 (2004) ("*Schools & Libraries Fourth Report*").

¹⁶ *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, ¶ 21 (2004) ("*Fifth Report & Order*").

¹⁷ *Id.* at ¶ 24.

cc: Ms. Joy Jackson
Achieve Telecom Network of MA., LLC
40 Shawmut Road, Suite 200
Canton, MA 02021

Dr. Joseph Burke
Mr. Robert G. Howell
Springfield Public School District
P.O. Box 1410
195 State Street
Springfield, MA 01102-1410

Ms. Melissa M. Shea
Sullivan, Hayes & Quinn
One Monarch Place, Suite 1200
Springfield, MA 01144

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 1C



Schools and Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

April 26, 2010

Kathleen T. Breck
Deputy City Solicitor
City of Springfield Law Department
36 Court Street, Room 210
Springfield, MA 01103

RECEIVED

APR 29 2010

**CITY OF SPRINGFIELD
Law Department**

RE:	Applicant Name:	SPRINGFIELD MASS. SCHOOL DISTRICT
	Billed Entity Number:	120089
	Form 471 Application No.:	538332
	Funding Request Number(s):	1490940
	Your Correspondence Dated:	November 7, 2008

Dear Ms. Breck:

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Commitment Adjustment Letter ("COMAD") to Achieve Telecom Network of Massachusetts, LLC ("Achieve") and Springfield, Massachusetts School District ("Springfield") for Funding Year 2006 for Application Number 538332. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1490940

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, Springfield makes several arguments as to why SLD erred in its decision to issue a COMAD and seek recovery of funds that have been improperly disbursed in Funding Year 2006. First, Springfield argues that it had no knowledge of any partnership between Achieve and United States Distance Learning Association ("USDLA") and was not aware that Achieve solicited donations on behalf of USDLA.

- SLD is aware that Springfield maintains that it had no knowledge of any partnership between Achieve and USDLA and that Springfield did not know Achieve solicited funds on behalf of USDLA. However, intent is not a relevant factor when determining whether program rules were violated and SLD routinely test applicants and service providers' statements and certifications in order to protect program integrity. In this case, information about the partnership between Achieve and USDLA was publicly available on USDLA's web site. USDLA's 2004 annual report states that USDLA formed a partnership with Achieve in order to pursue E-Rate K-12 monetary allocation. USDLA's 2006 and 2007 annual reports explain that USDLA's partnership with Achieve is providing revenue for the association and that the grant program that funds distance learning projects through E-Rate should be continued.¹ It is clear from USDLA's annual reports that the partnership with Achieve was beneficial to USDLA and that it was improving USDLA's revenue flow.²

Further, any statements that a partnership does not exist between Achieve and USDLA conflict with statements that were obtained from USDLA during the Special Compliance Review. In response to an information request, USDLA CEO John G. Flores specifically named Achieve as one of the members of USDLA and noted that USDLA was "fortunate that many companies who have an interest in e rate opportunities with school districts across the country are members of USDLA."³ Dr. Flores also commented that as USDLA "solicit[s] donations from philanthropic groups or private donations, [it] work[s] with [school] districts attempting to support what the e rate monies allow them to do. Achieve as a Massachusetts based company has taken advantage of this opportunity." *Id.* The information received from Dr. Flores directly conflicts with Ms. Jackson's statements that "Achieve is not a member of USDLA."⁴

The information regarding USDLA's partnership with Achieve is publicly available. Thus, Springfield could have learned about the partnership if it had conducted research on USDLA before applying for and accepting a grant from the organization. The fact that Springfield was unaware of this information is not relevant since intent is not a factor for determining whether program rules were violated.

¹ All three reports are available on USDLA's web site at www.usdla.org.

² USDLA's Form 990s appear to confirm USDLA's comments that the partnership with Achieve was successful and was generating revenues for the association. For the years 2002 through 2005, USDLA reported a shortfall at the end of the year on its Form 990s filed with the IRS. However, in 2006 and 2007, USDLA reported a positive balance at the end of the year. (Copies of USDLA's Form 990s are available at <http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Form990&EIN=680150292&Year=2007>.)

³ Apr. 3, 2008 E-Mail from Dr. John Flores (USDLA) to Jennifer Baumann (USAC-SCR).

⁴ July 17, 2008 Letter from Joy Jackson (Achieve) to Jennifer Cerciello (USAC-SCR).

- Springfield further argues that it was not aware that the USDLA grants were “specifically designated” for schools that selected Achieve as a service provider. In support of its argument, Springfield explains that the March 18, 2004 and the June 27, 2005 USDLA letters awarding the grant to Springfield explicitly stated that the grant was not contingent upon the selection of a specific vendor.
- SLD is aware that Springfield maintains that it had no knowledge that the USDLA grants were specifically designated for Achieve’s services. Further, SLD agrees that in the initial USDLA letters awarding the grant to Springfield, the letters included language that said the grant was not dependent on the selection of a particular vendor. However, the inclusion of that statement does not refute the documentation in SLD records and in the submitted appeal papers that show the USDLA grants were specifically earmarked for services provided by Achieve. Notably, all of the subsequent USDLA letters reaffirming the grant to Springfield referred to the project as the “AchieveXpress Telecommunications distance learning project,”⁵ despite the fact that Springfield had titled it the “Springfield Public School District Digital Divide Project” in its grant application.⁶ The fact that USDLA appears to use a standard form letter that refers to these projects as the “AchieveXpress Telecommunications distance learning project” instead using the actual project’s title adds further support to the claim that the USDLA grants were earmarked for Achieve’s services. To date, Springfield, Achieve, and USDLA have not provided any evidence to refute this determination.
- Springfield next argues that Achieve did not market its services as a “no-cost” service, nor did Achieve “guarantee” that USDLA would award grants to Springfield if Achieve was selected as the service provider. Springfield also states that it did not receive any “rebates” from Achieve. Springfield admits that Achieve informed them about the grants from USDLA that could cover their non-discounted portion. However, Springfield states that Achieve also stated there were other sources for potential grants. Springfield maintains that its personnel completed the grant applications and worked directly with USDLA personnel to obtain the USDLA grants. Springfield reiterates that the USDLA grants were not tied to the selection of any specific vendor.
- SLD disagrees with the assertion that Achieve did not guarantee USDLA grants to applicants who selected Achieve’s services and that the USDLA grants were not earmarked for Achieve’s services. SLD questioned Achieve and USDLA about whether USDLA grants were provided to

⁵ See, e.g., Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (affirming award of grant for the “AchieveXpress Telecommunications distance learning project”); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (same).

⁶ Feb. 14, 2005 USDLA grant application; Jan. 17, 2007 USDLA grant application.

other applicants who did not select Achieve as their service provider. To date, neither party has responded to the question or provided evidence to show that the USDLA grants were not tied to Achieve's services.

SLD also notes that the technology services contract between Springfield and Achieve contain specific provisions stating that Springfield is not liable for any of the costs associated with Achieve's services and that the costs would be covered in full through E-Rate funding and USDLA grants. *See* Oct. 25, 2005 Springfield/Achieve Technology Services Contract at § 3A ("It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement . . ."); Aug. 3, 2007 Springfield/Achieve Technology Services Contract at § 3A (same). The contract language further supports SLD's finding that achieve provided Springfield with fully funded services.

Finally, there is also evidence that USDLA did not provide the funding for the grant awarded to Springfield. Springfield was provided a three-year grant, with \$238,140.00 being awarded for Funding Year 2006.⁷ USAC has reviewed the IRS Form 990 that was filed by USDLA for 2006. Line Item 22, under the "Statement of Functional Expenses" is where USDLA is required to report the amount it has provided in grants for that year. USDLA's 2006 Form 990, Line Item 22 is blank and USDLA does not claim that any of its revenues was used to provide grants. It should also be noted that the one-year grant to Springfield for Funding Year 2006 was nearly one half of USDLA's reported revenues for 2006.⁸ It is questionable whether USDLA provided the grant to Springfield since the grant was not reported to the IRS on USDLA's 2006 Form 990.

- Springfield next argues that Achieve never waived its non-discounted portion of costs. Springfield reiterates that the USDLA grant was used to cover its costs and that program rules allow applicants to use such grants to cover their non-discounted costs.
- SLD agrees that grants and donations are permissible sources of resources that an applicant may use to demonstrate that funds exist to pay the applicant's non-discounted portion of costs and that service providers are allowed to assist applicants in locating such grants. However, the Special Compliance Review team questioned Achieve and USDLA regarding whether USDLA grants were provided to other E-Rate applicants who did not select Achieve as their service provider. To date, neither party has provided any documentation to refute SLD's finding that the USDLA

⁷ *See* Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (noting award was for 36 months at \$19,845/month); *see also* June 1, 2006 E-Mail from R. Hamel (Springfield) to J. Landsman (USAC) (affirming that the school district received a three-year grant from USDLA).

⁸ USDLA's reported revenues to the IRS for 2006 was \$511,754. *See* USDLA 2006 Form 990, available at http://207.153.189.83/EINS/680150292/680150292_2006_03A3AC35.PDF.

grants were only provided to E-Rate applicants who selected Achieve's services. In addition, the August 2005, February 2007, and January 2008 award letters from USDLA to Springfield specifically state that the grant was to cover "Achieve Xpress Telecommunications distance learning project" despite the fact Springfield had titled its project the "Springfield Digital Divide Project" in its grant application.⁹ This evidence supports SLD's finding that the USDLA grants were earmarked for Achieve's services and Springfield did not pay its non-discounted portion of costs.

- FCC rules require applicants to pay the non-discounted portion of the costs. FCC adopted the Federal-State Joint Board on Universal Service's recommendation to promulgate rules that provided universal support to eligible schools and libraries through a percentage discount system rather than allowing free services or block grants to be used to cover the schools and libraries' costs.¹⁰ FCC explained that "requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively."¹¹ In 2003, FCC clarified and codified this restriction, explaining that the rules "require[] that an entity must pay the entire undiscounted portion of any services it receives through the libraries and schools program."¹² After a thorough review of the evidence in this matter, it is clear that Springfield failed to pay its non-discounted portion of service because Achieve provided its services at no-cost to Springfield.
- Springfield argues that it should not be held liable for any program violations because it has complied with FCC requirements and disclosed the use of USDLA grants to SLD.
- SLD finds that both Achieve and Springfield are responsible for these rule violations because Springfield was not able to conduct a fair and open competitive bidding process based on Achieve's no-cost guarantee and

⁹ See Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Jan. 25, 2008 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield).

¹⁰ *Federal-State Joint Board on Universal Service*, Report & Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9035-36, FCC 97-157, ¶ 492 (1997) ("*Universal Service Order*").

¹¹ *Id.*

¹² *Schools & Libraries Universal Service Support Mechanism*, Third Report & Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 03-323, ¶ 41 (2003) ("*Third Report & Order*"). This Order codified 47 C.F.R. § 54.523, which states "An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts." See also, *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15831, FCC 04-190, ¶ 68 (2004) ("*Fifth Report and Order*") (clarifying and codifying the requirement that schools and libraries certify that they have secured access to the resources necessary to effectively use the products and services purchased with universal discounts, including the ability to pay the non-discounted portion).

Achieve gained an unfair competitive advantage by guaranteeing USDLA grants designed to cover Springfield's non-discounted portion of costs of Achieve's services.

FCC rules require a fair and open competitive bidding process. Under the Commission's rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, "direct involvement in an application process by a service provider would thwart the competitive bidding process."¹³ Communications between applicants and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with the others, and all bidders know what is required of them.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the service provider prior to the competitive bidding that would unfairly influence the outcome of a completion or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.¹⁴

¹³ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, 19 FCC Rcd 6858, ¶ 60 (2003). See also, *Request for Review of the Decision of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032-33, ¶ 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by SEND Technologies LLC, Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 07-1270 (2007); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 08-449 (2008).

¹⁴ See www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

The competitive bidding process in this matter was not fair or open because of Achieve offering to provide fully funded services by using USDLA's grants to cover Springfield's share of costs.

- SLD has determined that program rule violations have occurred and as a result this appeal is denied in full. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or disbursements of funds were inconsistent with program rules.¹⁵ In particular, FCC rules require USAC to "recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of [FCC's] rules and amplified in related Commission orders."¹⁶ Moreover, FCC rules require "that all funds disbursed should be recovered for any funding request in which the beneficiary failed to pay its non-discounted share."¹⁷

For appeals that have been denied, partially approved, dismissed or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We also thank you for your continued support, patience and cooperation during this appeal process.

Schools and Libraries Division
Universal Service Administrative Company

¹⁵ See *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Schools & Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report & Order, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Rcd 15252 (2004) ("*Schools & Libraries Fourth Report*").

¹⁶ *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, ¶ 21 (2004) ("*Fifth Report & Order*").

¹⁷ *Id.* at ¶ 24.

cc: Ms. Joy Jackson
Achieve Telecom Network of MA., LLC
40 Shawmut Road, Suite 200
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Dr. Joseph Burke
Mr. Robert G. Howell
Springfield Public School District
P.O. Box 1410
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Ms. Melissa M. Shea
Sullivan, Hayes & Quinn
One Monarch Place, Suite 1200
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**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 1D



Administrator's Decision on Appeal – Funding Year 2007-2008

April 26, 2010

Kathleen T. Breck
Deputy City Solicitor
City of Springfield Law Department
36 Court Street, Room 210
Springfield, MA 01103

RECEIVED

APR 29 2010

**CITY OF SPRINGFIELD
Law Department**

RE:	Applicant Name:	SPRINGFIELD MASS. SCHOOL DISTRICT
	Billed Entity Number:	120089
	Form 471 Application No.:	577110
	Funding Request Number(s):	1595241
	Your Correspondence Dated:	November 7, 2008

Dear Ms. Breck:

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Commitment Adjustment Letter ("COMAD") to Achieve Telecom Network of Massachusetts, LLC ("Achieve") and Springfield, Massachusetts School District ("Springfield") for Funding Year 2007 for Application Number 577110. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1595241

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, Springfield makes several arguments as to why SLD erred in its decision to issue a COMAD and seek recovery of funds that have been improperly disbursed in Funding Year 2007. First, Springfield argues that it had no knowledge of any partnership between Achieve and United States Distance Learning Association ("USDLA") and was not aware that Achieve solicited donations on behalf of USDLA.

- SLD is aware that Springfield maintains that it had no knowledge of any partnership between Achieve and USDLA and that Springfield did not know Achieve solicited funds on behalf of USDLA. However, intent is not a relevant factor when determining whether program rules were violated and SLD routinely test applicants and service providers' statements and certifications in order to protect program integrity. In this case, information about the partnership between Achieve and USDLA was publicly available on USDLA's web site. USDLA's 2004 annual report states that USDLA formed a partnership with Achieve in order to pursue E-Rate K-12 monetary allocation. USDLA's 2006 and 2007 annual reports explain that USDLA's partnership with Achieve is providing revenue for the association and that the grant program that funds distance learning projects through E-Rate should be continued.¹ It is clear from USDLA's annual reports that the partnership with Achieve was beneficial to USDLA and that it was improving USDLA's revenue flow.²
- Further, any statements that a partnership does not exist between Achieve and USDLA conflict with statements that were obtained from USDLA during the Special Compliance Review. In response to an information request, USDLA CEO John G. Flores specifically named Achieve as one of the members of USDLA and noted that USDLA was "fortunate that many companies who have an interest in e rate opportunities with school districts across the country are members of USDLA."³ Dr. Flores also commented that as USDLA "solicit[s] donations from philanthropic groups or private donations, [it] work[s] with [school] districts attempting to support what the e rate monies allow them to do. Achieve as a Massachusetts based company has taken advantage of this opportunity." *Id.* The information received from Dr. Flores directly conflicts with Ms. Jackson's statements that "Achieve is not a member of USDLA."⁴

The information regarding USDLA's partnership with Achieve is publicly available. Thus, Springfield could have learned about the partnership if it had conducted research on USDLA before applying for and accepting a grant from the organization. The fact that Springfield was unaware of this information is not relevant since intent is not a factor for determining whether program rules were violated.

¹ All three reports are available on USDLA's web site at www.usdla.org.

² USDLA's Form 990s appear to confirm USDLA's comments that the partnership with Achieve was successful and was generating revenues for the association. For the years 2002 through 2005, USDLA reported a shortfall at the end of the year on its Form 990s filed with the IRS. However, in 2006 and 2007, USDLA reported a positive balance at the end of the year. (Copies of USDLA's Form 990s are available at <http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Form990&EIN=680150292&Year=2007>.)

³ Apr. 3, 2008 E-Mail from Dr. John Flores (USDLA) to Jennifer Baumann (USAC-SCR).

⁴ July 17, 2008 Letter from Joy Jackson (Achieve) to Jennifer Cerciello (USAC-SCR).

- Springfield further argues that it was not aware that the USDLA grants were “specifically designated” for schools that selected Achieve as a service provider. In support of its argument, Springfield explains that the March 18, 2004 and the June 27, 2005 USDLA letters awarding the grant to Springfield explicitly stated that the grant was not contingent upon the selection of a specific vendor.
- SLD is aware that Springfield maintains that it had no knowledge that the USDLA grants were specifically designated for Achieve’s services. Further, SLD agrees that in the initial USDLA letters awarding the grant to Springfield, the letters included language that said the grant was not dependent on the selection of a particular vendor. However, the inclusion of that statement does not refute the documentation in SLD records and in the submitted appeal papers that show the USDLA grants were specifically earmarked for services provided by Achieve. Notably, all of the subsequent USDLA letters reaffirming the grant to Springfield referred to the project as the “AchieveXpress Telecommunications distance learning project,”⁵ despite the fact that Springfield had titled it the “Springfield Public School District Digital Divide Project” in its grant application.⁶ The fact that USDLA appears to use a standard form letter that refers to these projects as the “AchieveXpress Telecommunications distance learning project” instead using the actual project’s title adds further support to the claim that the USDLA grants were earmarked for Achieve’s services. To date, Springfield, Achieve, and USDLA have not provided any evidence to refute this determination.
- Springfield next argues that Achieve did not market its services as a “no-cost” service, nor did Achieve “guarantee” that USDLA would award grants to Springfield if Achieve was selected as the service provider. Springfield also states that it did not receive any “rebates” from Achieve. Springfield admits that Achieve informed them about the grants from USDLA that could cover their non-discounted portion. However, Springfield states that Achieve also stated there were other sources for potential grants. Springfield maintains that its personnel completed the grant applications and worked directly with USDLA personnel to obtain the USDLA grants. Springfield reiterates that the USDLA grants were not tied to the selection of any specific vendor.
- SLD disagrees with the assertion that Achieve did not guarantee USDLA grants to applicants who selected Achieve’s services and that the USDLA grants were not earmarked for Achieve’s services. SLD questioned Achieve and USDLA about whether USDLA grants were provided to

⁵ See, e.g., Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (affirming award of grant for the “AchieveXpress Telecommunications distance learning project”); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield) (same).

⁶ Feb. 14, 2005 USDLA grant application; Jan. 17, 2007 USDLA grant application.

other applicants who did not select Achieve as their service provider. To date, neither party has responded to the question or provided evidence to show that the USDLA grants were not tied to Achieve's services.

SLD also notes that the technology services contract between Springfield and Achieve contain specific provisions stating that Springfield is not liable for any of the costs associated with Achieve's services and that the costs would be covered in full through E-Rate funding and USDLA grants. *See* Oct. 25, 2005 Springfield/Achieve Technology Services Contract at § 3A ("It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement . . ."); Aug. 3, 2007 Springfield/Achieve Technology Services Contract at § 3A (same). The contract language further supports SLD's finding that achieve provided Springfield with fully funded services.

Finally, there is also evidence that USDLA did not provide the funding for the grant awarded to Springfield. USDLA was provided a three-year grant, with \$221,400 being awarded for Funding Year 2007.⁷ USAC has reviewed the IRS Form 990 that was filed by USDLA for 2007. Line Item 22, under the "Statement of Functional Expenses" is where USDLA is required to report the amount it has provided in grants for that year. USDLA's 2007 Form 990, Line Item 22 is blank and USDLA does not claim that any of its revenues was used to provide grants. It should also be noted that the one-year grant to Springfield for Funding Year 2007 was more than one third of USDLA's reported revenues for 2007.⁸ It is questionable whether USDLA provided the grant to Springfield since the grant was not reported to the IRS on USDLA's 2007 Form 990.

- Springfield next argues that Achieve never waived its non-discounted portion of costs. Springfield reiterates that the USDLA grant was used to cover its costs and that program rules allow applicants to use such grants to cover their non-discounted costs.
- SLD agrees that grants and donations are permissible sources of resources that an applicant may use to demonstrate that funds exist to pay the applicant's non-discounted portion of costs and that service providers are allowed to assist applicants in locating such grants. However, the Special Compliance Review team questioned Achieve and USDLA regarding whether USDLA grants were provided to other E-Rate applicants who did not select Achieve as their service provider. To date, neither party has provided any documentation to refute SLD's finding that the USDLA grants were only provided to E-Rate applicants who selected Achieve's services. In addition, the August 2005, February 2007, and January 2008

⁷ *See* Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield).

⁸ USDLA's reported revenues to the IRS for 2007 was \$654,294. *See* USDLA 2007 Form 990, *available at* http://207.153.189.83/EINS/680150292/680150292_2007_04BCB3BD.PDF.

award letters from USDLA to Springfield specifically state that the grant was to cover “Achieve Xpress Telecommunications distance learning project” despite the fact Springfield had titled its project the “Springfield Digital Divide Project” in its grant application.⁹ This evidence supports SLD’s finding that the USDLA grants were earmarked for Achieve’s services and Springfield did not pay its non-discounted portion of costs.

- FCC rules require applicants to pay the non-discounted portion of the costs. FCC adopted the Federal-State Joint Board on Universal Service’s recommendation to promulgate rules that provided universal support to eligible schools and libraries through a percentage discount system rather than allowing free services or block grants to be used to cover the schools and libraries’ costs.¹⁰ FCC explained that “requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively.”¹¹ In 2003, FCC clarified and codified this restriction, explaining that the rules “require[] that an entity must pay the entire undiscounted portion of any services it receives through the libraries and schools program.”¹² After a thorough review of the evidence in this matter, it is clear that Springfield failed to pay its non-discounted portion of service because Achieve provided its services at no-cost to Springfield.
- Springfield argues that it should not be held liable for any program violations because it has complied with FCC requirements and disclosed the use of USDLA grants to SLD.
- SLD finds that both Achieve and Springfield are responsible for these rule violations because Springfield was not able to conduct a fair and open competitive bidding process based on Achieve’s no-cost guarantee and Achieve gained an unfair competitive advantage by guaranteeing USDLA

⁹ See Aug. 31, 2005 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Feb. 7, 2007 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield); Jan. 25, 2008 Letter from Dr. John Flores (USDLA) to Dr. Joseph Burke (Springfield).

¹⁰ *Federal-State Joint Board on Universal Service*, Report & Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9035-36, FCC 97-157, ¶ 492 (1997) (“*Universal Service Order*”).

¹¹ *Id.*

¹² *Schools & Libraries Universal Service Support Mechanism*, Third Report & Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 03-323, ¶ 41 (2003) (“*Third Report & Order*”). This Order codified 47 C.F.R. § 54.523, which states “An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts.” See also, *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15831, FCC 04-190, ¶ 68 (2004) (“*Fifth Report and Order*”) (clarifying and codifying the requirement that schools and libraries certify that they have secured access to the resources necessary to effectively use the products and services purchased with universal discounts, including the ability to pay the non-discounted portion).

grants designed to cover Springfield's non-discounted portion of costs of Achieve's services.

FCC rules require a fair and open competitive bidding process. Under the Commission's rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, "direct involvement in an application process by a service provider would thwart the competitive bidding process."¹³ Communications between applicants and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with the others, and all bidders know what is required of them.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the service provider prior to the competitive bidding that would unfairly influence the outcome of a completion or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.¹⁴

The competitive bidding process in this matter was not fair or open because of Achieve offering to provide fully funded

¹³ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, 19 FCC Rcd 6858, ¶ 60 (2003). See also, *Request for Review of the Decision of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032-33, ¶ 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by SEND Technologies LLC, Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 07-1270 (2007); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 08-449 (2008).

¹⁴ See www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

services by using USDLA grants to cover Springfield's share of costs.

- SLD has determined that program rule violations have occurred and as a result this appeal is denied in full. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or disbursements of funds were inconsistent with program rules.¹⁵ In particular, FCC rules require USAC to "recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of [FCC's] rules and amplified in related Commission orders."¹⁶ Moreover, FCC rules require "that all funds disbursed should be recovered for any funding request in which the beneficiary failed to pay its non-discounted share."¹⁷

For appeals that have been denied, partially approved, dismissed or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We also thank you for your continued support, patience and cooperation during this appeal process.

Schools and Libraries Division
Universal Service Administrative Company

¹⁵ See *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Schools & Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report & Order, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Rcd 15252 (2004) ("*Schools & Libraries Fourth Report*").

¹⁶ *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, ¶ 21 (2004) ("*Fifth Report & Order*").

¹⁷ *Id.* at ¶ 24.

cc: Ms. Joy Jackson
Achieve Telecom Network of MA., LLC
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Canton, MA 02021

Dr. Joseph Burke
Mr. Robert G. Howell
Springfield Public School District
P.O. Box 1410
195 State Street
Springfield, MA 01102-1410

Ms. Melissa M. Shea
Sullivan, Hayes & Quinn
One Monarch Place, Suite 1200
Springfield, MA 01144

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 2



THE CITY OF SPRINGFIELD, MASSACHUSETTS

DATE: November 7, 2008

To: appeals@sl.universalservice.org

and

**To: (BY FEDEX)
Letter of Appeal
Schools & Libraries Division
Dept. 125 - Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981**

**Re: APPEAL OF COMMITMENT ADJUSTMENT LETTERS BY APPLICANT -
SPRINGFIELD PUBLIC SCHOOLS**

To Whom This May Concern:

This is an appeal by the Springfield, Massachusetts Public Schools ("DISTRICT") of four (4) Commitment Adjustment Letters for funding years 2004-2005*, 2005-2006, 2006-2007, and 2007-2008. (*Please note that the DISTRICT never received the Commitment Adjustment Letter for the 2004-2005 funding year, but learned of its existence from counsel for the Service Provider, who forwarded it to the DISTRICT on November 4, 2008.)

All four appeals are contained in this filing.

1. District Contact Information:

The DISTRICT's contact information for these appeals is as follows:

Robert G. Howell
Director of Technology Operations
Springfield Public Schools
E-mail: howellr@sps.springfield.ma.us
Phone: (413) 787-7870
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Fax: (413) 731-8206

2. USAC Detail for Each Funding Year on Appeal:

The following is the information requested for each of the four (4) appeals, including the date of the Notification of Commitment Adjustment Letter, the Funding Request Number, the Billed Entity Name, Form 471 Application Number, Billed Entity Number and FCC Registration Number from each letter:

a) Funding Year: 2004-2005

Date of Notification of Commitment Adjustment Letter:
District never received this notice from USAC. The Notification of Commitment Adjustment Letter provided to District by Service Provider on November 4, 2008 is dated September 8, 2008.

Funding Request Number: **1207981**
Billed Entity Name: **Springfield Public Schools**
Form 471 Application Number: **433768**
Billed Entity Number: **120089**
FCC Registration Number: **0011975380**

2004-2005 Original Funding Commitment:	\$6,063.00
Commitment Adjustment Amount:	\$6,063.00
Funds Disbursed to Date:	\$ 0.00
Funds to be recovered from applicant:	\$ 0.00

b) Funding Year: 2005-2006

Date of Notification of Commitment Adjustment Letter: **September 8, 2008**

Funding Request Number: **1352672**
Billed Entity Name: **Springfield Public Schools**
Form 471 Application Number: **487623**
Billed Entity Number: **120089**
FCC Registration Number: **0011975380**

2005-2006 Original Funding Commitment:	\$1,454,553.00
Commitment Adjustment Amount:	\$1,454,553.00
Funds Disbursed to Date:	\$ 327,424.50
Funds to be recovered from applicant:	\$ 327,424.50

c) Funding Year: 2006-2007

Date of Notification of Commitment Adjustment Letter: **September 8, 2008**

Funding Request Number: **1490940**
Billed Entity Name: **Springfield Public Schools**
Form 471 Application Number: **538332**
Billed Entity Number: **120089**

FCC Registration Number: **0011975380**

2006-2007 Original Funding Commitment:	\$1,465,200.00
Commitment Adjustment Amount:	\$1,465,200.00
Adjusted Funding Commitment:	\$ 0.00
Funds Disbursed to Date:	\$1,465,200.00
Funds to be recovered from applicant:	\$1,465,200.00

d) Funding Year: **2007-2008**

Date of Notification of Commitment Adjustment Letter: **September 8, 2008**

Funding Request Number	1595241
Billed Entity Name:	Springfield Public Schools
Form 471 Application Number:	577110
Billed Entity Number:	120089
FCC Registration Number:	0011975380

2007-2008 Original Funding Commitment:	\$1,623,600.00
Commitment Adjustment Amount:	\$1,623,600.00
Adjusted Funding Commitment:	\$ 0.00
Funds Disbursed to Date:	\$ 0.00
Funds to be recovered from applicant:	\$ 0.00

3) Statement of Appeal:

The DISTRICT hereby appeals from the Commitment Adjustment Letters seeking recovery of disbursed funds from the DISTRICT and its service provider, Achieve Telecom Network of MA, LLC ("Achieve"), for funding years 2004-2005, 2005-2006, 2006-2007 and 2007-2008.

4) Language Appealed From:

These appeals are based on the following language in the Notification of Commitment Adjustment Letters and Funding Commitment Adjustment Reports, which are identical for all three years:

a) Notification of Commitment Adjustment Letters: The DISTRICT appeals from the following language in the Notification of Commitment Adjustment Letters for each year on appeal:

1st par: "Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules".

2nd par: "In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for some or all of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any)."

b) Funding Commitment Adjustment Reports:

The DISTRICT appeals from the entire content of the Funding Commitment Adjustment Reports for each of the four years on appeal. The allegations may be summarized as follows:

- i) Achieve has a partnership with the USDLA and solicits donations on behalf of USDLA.
- ii) USDLA then provides grants to applicants to use to pay their non-discount share, which is specifically designated for Achieve funding requests.

- iii) Achieve's bids to applicants indicate that Achieve markets their service to applicants as a no cost service because Achieve is able to guarantee applicants that they will receive USDLA grants to pay their share for the Achieve funding requests. Achieve is therefore providing applicants with a rebate for the applicant's portion of the cost.
- iv) It is a violation of program rules for the service provider to waive the applicant's non-discount portion or otherwise not require payment. The Applicant's share cannot come directly or indirectly from the applicant's service provider.
- v) Applicants may not receive rebates for services or products purchased with universal service discounts from the service provider providing the services.
- vi) Both the applicant and the service provider are responsible for these rule violations based on Achieve's no-cost guarantee, and Achieve had an unfair competitive advantage because Achieve guaranteed a no-cost service in violation of the rule that the service provider not provide a rebate to the applicant.
- vii) USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

5) District's responses to USAC/SLD allegations:

The DISTRICT offers the following response to the allegations enumerated in sections 4(a) and (b) above, for each of the years on appeal.

- a) **Allegation:** Achieve has a *partnership with the USDLA and solicits donations on behalf of USDLA.*

DISTRICT Response: During the years in question, Robert Hamel was responsible for the DISTRICT's application process for E-Rate Program Support. This included meeting with service providers, including Achieve, and receiving written materials from Achieve in response to the Applications. See Exhibit A, Declaration of Robert Hamel ("Hamel Declaration"), par. 2.

At the time the DISTRICT applied for the funding from USAC/SLD for each of the four years on appeal, and at the time each of the USDLA grants were awarded to the DISTRICT, the DISTRICT had no knowledge of any "partnership" between Achieve and USDLA. See Exhibit A, Hamel Declaration, paras. 4, 6).

Similarly, during that time period, the DISTRICT had no knowledge of any donations solicited by Achieve on behalf of USDLA. Exhibit A, Hamel Declaration, par. 6. The DISTRICT learned of these allegations for the first time upon receipt of USAC/SLD's Notification of Commitment Adjustment Letters sometime after they were issued on September 8, 2008.

- b) **Allegation:** USDLA then provides grants to applicants to use to pay their non-discount share, which is *specifically designated for Achieve funding requests.*

DISTRICT Response: The DISTRICT had no knowledge of USDLA funds being "specifically designated" for schools that used Achieve as a service provider. In fact, John Flores, the Executive Director of USDLA, sent letters to the DISTRICT's Superintendent of Schools on March 18, 2004 and June 27, 2005 indicating that the USDLA Grant awards were *not contingent* upon the selection of a specific vendor:

"We understand the project will be funded primarily with E-rate funds from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company and will be dependent upon the approval of the SLD. While you may have been referred to USDLA by a vendor for this project, please understand that our grant is to your school district and is not dependent upon your selection of any specific vendor."

Emphasis supplied. See Exhibit B-1, USDLA letter to Superintendent of Schools Joseph Burke, dated March 18, 2004, 3rd par; and Exhibit B-2, USDLA letter to Superintendent of Schools Joseph Burke, dated June 27, 2005, 4th par. See also Exhibit A, Hamel Declaration, par. 4.

- c) **Allegation:** Achieve's bids to applicants indicate that *Achieve markets their service* to applicants as a *no cost service* because *Achieve is able to guarantee applicants that they will receive USDLA grants to*

pay their share for the Achieve funding requests. Achieve is therefore providing applicants with a rebate for the applicant's portion of the cost.

DISTRICT Response: As Mr. Hamel's Declaration points out, he reviewed the written proposals submitted by Achieve concerning its proposed services in response to the Form 470 Applications. Exhibit A, Hamel Declaration, par. 2. Mr. Hamel states that Achieve *did not* market its service to the DISTRICT as a "no cost" service, nor did it "guarantee" that the DISTRICT would receive USDLA grants to pay its share of the Achieve funding request. Furthermore the DISTRICT did not receive any "rebate" from Achieve for its portion of the cost. Mr. Hamel's Declaration states:

"4. Achieve's oral and written presentations to the District in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the District. Achieve did inform the District of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover the District's share of the cost of the services ("District Share"), covered by the applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent either orally or in writing to the District, that if the District selected Achieve as its service provider and applied for such a Grant from USDLA that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to the District. Furthermore, USDLA specified that the Grant award was not contingent upon the selection of Achieve for the provision of services to the District."

Exhibit A, Hamel Declaration, par. 4.

Mr. Hamel's Declaration indicates that the DISTRICT, not Achieve, obtained, prepared and filed its own grant applications with USDLA. Achieve was not involved in any way with the grant application process. Rather, DISTRICT personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants. See Exhibit A, Hamel Declaration, par. 5.

d) **Allegation:** It is a violation of program rules for the service provider to *waive the applicant's non-discount portion or otherwise not require payment*. The Applicant's share cannot come directly or indirectly from the applicant's service provider.

DISTRICT Response: Achieve never offered to "waive" the DISTRICT's non-discount portion nor did it "otherwise not require payment". See Exhibit A, Hamel Declaration, par. 7.

The DISTRICT's non-discount portion did not come "directly or indirectly" from Achieve. Rather, the grant came from USDLA in response to grant requests filed by the DISTRICT without any participation by Achieve. See Exhibit A, Hamel Declaration, par. 5. This is in compliance with guidance offered to applicants on USAC's website.

USAC's website advises applicants that it is permissible for them to use grant funds to pay for their non-discount portion. The USAC website includes the following language in the section entitled "Step 11: Obligation to Pay Non-discount Portion" (located at <http://www.usac.org/sl/applicants/step11/obligation-to-pay.aspx>):

"Some service providers offer to help applicants locate grants to pay for their non-discount portion. Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants or organizations are independent of the service provider."

See Exhibit C, excerpt from USAC website, "Step 11 - Obligation to Pay Non-discount Portion".

As noted in Achieve's appeals on these same issues, the FCC has identified grants or donations to E-Rate Program applicants as a permissible source of the resources that an applicant must demonstrate that it has

in order to receive E-Rate Program support, i.e. the applicant's non-discounted share. See *In the Matter of Requests for Review of the Universal Service Administrator by Academy of Excellence, Phoenix, AZ, et al.*, 22 FCC Rcd 8722 (2007).

Mr. Hamel's Declaration states that the DISTRICT disclosed the application and award of the USDLA grants covering the DISTRICT's share to USAC throughout the E-Rate application process, selective review process and service invoicing process. See Exhibit A, Hamel Declaration, par. 8. See also DISTRICT's response to item 5(f) below.

e) **Allegation:** Applicants may not receive rebates for services or products purchased with universal service discounts *from the service provider providing the services*.

DISTRICT Response: See response to item 5(c) above.

f) **Allegation:** Both the *applicant and the service provider are responsible for these rule violations* based on Achieve's no-cost guarantee, and Achieve had an unfair competitive advantage because Achieve guaranteed a no-cost service in violation of the rule that the service provider not provide a rebate to the applicant.

DISTRICT Response: As Mr. Hamel's Declaration points out, Achieve *did not* market its service to the DISTRICT as a "no cost" service, nor did it "guarantee" that the DISTRICT would receive USDLA grants to pay its share of the Achieve funding request. Exhibit A, Hamel Declaration, par. 4. Furthermore, there was never an offer by Achieve to "waive" the DISTRICT's non-discount share, to otherwise not require payment of the DISTRICT's share, or to give the DISTRICT a "rebate". Exhibit A, Hamel Declaration, par. 7. In addition, the DISTRICT was not aware of the existence of any alleged partnership between Achieve and USDLA. Exhibit A, Hamel Declaration, par. 6.

USAC's own guidance to applicants indicates that is permissible for Applicants to use grant funds to pay for their non-discount portion. See Exhibit C, excerpt from USAC website, Step 11, 7th paragraph. There was no violation of USAC's program rules for the DISTRICT to use the USDLA grant to pay its non-discount share.

For each year on appeal, the DISTRICT was awarded a grant from the United States Distance Learning Association ("USDLA"), which was used to satisfy the DISTRICT's co-pay portion of the application. This fact was disclosed to USAC/SLD in each instance. For example, in 2005 and 2006, the DISTRICT checked box 25f on Block 6 of the Form 471 application indicating that a service provider listed on the Forms 471 had provided assistance to the DISTRICT in locating funds in item 25e. The DISTRICT had one oversight in 2005, as this was the first year the Form 471 included box 25f and it was overlooked, however, the DISTRICT clarified this issue in response to questions raised by USAC/SLD during subsequent PIA reviews. (See Exhibits D-1 and D-2, emails between Robert Hamel and the USAC PIA reviewer dated June 1, 2006 (Exhibit D-1), June 18, 2006 and June 19, 2006 (Exhibit D-2).

g) **Allegation:** Program rules were violated, and the applicant is responsible to repay all or some of the funds disbursed in error. USAC will seek recovery of the improperly disbursed funds from *both the applicant and the service provider*.

DISTRICT Response: The DISTRICT denies that it violated any program rules. If USAC/SLD determines that there were program rule violations based on an allegedly improper relationship between Achieve and USDLA that the DISTRICT had no knowledge of or participation in, it would be inequitable for USAC/SLD to hold the DISTRICT accountable for such actions and would violate public policy to require the DISTRICT to reimburse over \$1.7 million dollars in funds disbursed to Achieve.

USAC has alleged no violations of program rules committed knowingly by the DISTRICT. The DISTRICT was not responsible for any violations of USAC rules for the years on appeal.

6. Conclusion and Request for Relief:

The DISTRICT was not responsible for any violations of USAC rules for the years on appeal. For each year on appeal, the DISTRICT fully disclosed the existence of the USDLA grants and their source, and has complied with USAC/SLD's program requirements. After disclosing such grants, USAC approved funding to the DISTRICT for each of the four (4) years on appeal. The DISTRICT acted in reliance on USAC's approvals of these applications, reasonably believing that the grant arrangement, which was consistent with guidance to applicants on USAC's website, was acceptable to USAC. See Exhibit C.

The DISTRICT does not understand why USAC is now, years later, taking the position that this arrangement was unacceptable, based on allegations that were completely unknown to the DISTRICT, and which the DISTRICT has no participation in, then asking the DISTRICT to repay over \$1.7 million dollars that it never received.

For the reasons set forth above, the DISTRICT requests that USAC find in favor of the DISTRICT, grant this appeal for all four (4) years, cancel the four (4) Commitment Adjustment Letters, and promptly pay the outstanding unpaid Achieve invoices for the services provided to the DISTRICT by Achieve during funding years 2004, 2005, 2006 and 2007.

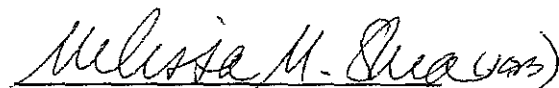
Furthermore, the DISTRICT respectfully requests that in the event USAC denies these appeals and finds that there were program rule violations based on an allegedly improper relationship between Achieve and USDLA that the DISTRICT had no knowledge of or participation in, the DISTRICT respectfully request that it be excluded from any punitive action or demands for reimbursement in connection with these grants. It would be inequitable for USAC/SLD to hold the DISTRICT accountable for such actions and would violate public policy to require the DISTRICT to reimburse over \$1.7 million dollars in funds disbursed to Achieve.

Should you have any questions, please contact the DISTRICT's counsel listed below. Thank you for your assistance in this matter.

Respectfully Submitted,
The DISTRICT - Springfield Public Schools:
By its counsel:



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Cc: Mayor Domenic Sarno, City of Springfield, MA
Dr. Alan Ingram, Superintendent of Schools
Stephen J. Lisauskas, Executive Director, Finance Control Board
Sen. Edward Kennedy
Sen. John Kerry
Congressman Richard E. Neal

EXHIBIT A

EX. A

DECLARATION

1. I, Robert G. Hamel, was the Assistant to the Superintendent for the Springfield Public School District of Springfield, Massachusetts ("District"). I occupied that position from December, 1995 until January, 2008. My responsibilities with the District included the oversight of the process for preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").

2. Consistent with my responsibilities, I participated in the District's application process for E-Rate Program support for Funding Years 2004 through 2007 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). Part of that participation included, where necessary, meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed written proposals submitted by Achieve concerning its proposed services in response to the Applications. Pursuant to state and local procurement rules and E-Rate Program Rules, for each of the Funding Years in question, Springfield chose Achieve to provide the digital transmission services pursuant to the terms and conditions set forth in State Master Contract ITS07. As required under E-Rate Program rules, the District timely submitted FCC Form 471 Nos. 2004: 433768; 2005: 487623; 2006: 538332; 2007: 577110 to USAC. USAC approved the E-Rate Program support by Funding Commitment Decision Letters for Funding Request Nos. 1207981, 1352672; 1490940; and 1595241 for 2004, 2005, 2006 and 2007 respectively ("FCDLs")

3. I have reviewed the four (4) Notification of Commitment Adjustment Letters, dated September 8, 2008, whereby USAC has rescinded and seeks recovery of the support approved or provided pursuant the FCDL ("Decisions"). In particular, I have reviewed the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the District's appeal of the Decisions.

4. Achieve's oral and written presentations to the District in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the District. Achieve did inform the District of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover the District's share of the cost of the services ("District Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to the District, that if the District selected Achieve as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposals made to the District. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of ACHIEVE for the provision of services to the District.

5. The District obtained, prepared and filed its own applications with USDLA for the Grants. Achieve was not involved in any way in the Grant application process. District personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants.

6. The District was not aware of the existence of any alleged partnership between ACHIEVE and USDLA. The District was also unaware of any donations solicited by ACHIEVE for USDLA.

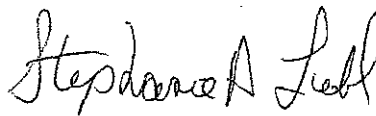
7. There was never an offer by ACHIEVE to waive or otherwise not require payment of the District's Share. Nor did ACHIEVE ever offer to rebate the District's Share.

8. The District disclosed the application and award of the Grant from USDLA to cover the District's Share throughout all aspects of the E-Rate application process, selective review process, and service invoice processing.

I declare under penalty of perjury that the foregoing is true and correct on this 6th day of November, 2008.



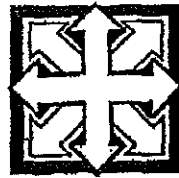
Robert G. Hamel



STEPHANIE A. LIEBL
Notary Public
My Commission Expires October 22, 2010

EXHIBIT B-1

EX. B-1

**USDLA®**

UNITED STATES DISTANCE LEARNING ASSOCIATION

March 18, 2004

Dr. Joseph P. Burke
Superintendent of Schools
Springfield Public School District
195 State Street
Springfield, MA 01102-1410

Dear Dr. Burke:

The United States Distance Learning Association (USDLA) is pleased to receive and accept your grant application for funding assistance for the Springfield Public School District Digital Divide Project. We appreciate the opportunity to assist your Springfield School District with this very important and ambitious distance learning project. USDLA is a registered 501 (c) 3, and we provide these grants to support distance learning projects for K-12 school districts.

One goal of USDLA focuses on ending the "digital divide" in urban and rural America by supporting the implementation of state-of-the-art technology which encourages and enhances the classroom learning experience with advanced technical resources. Your project represents that specific goal and we welcome the opportunity to build this very important partnership with the Springfield Public School District.

We understand that the project will be funded primarily by E-rate funds from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company and will be dependent upon the approval of the SLD. While you may have been referred to USDLA by a vendor for this project, please understand that our grant is to your school district and is not dependent upon your selection of any specific vendor.

USDLA requires that a final budget be submitted by each school district upon receipt of the Funding Commitment Letter from the SLD. This budget must confirm the E-rate discount percentage and the resultant E-rate cost share for the project. In addition, USDLA expects that a separate line item in the school district budget will be established that is specifically for the receipt of USDLA grant funds for this project. Please communicate the account number and directions for sending the grant money to this account.

Congratulations! We look forward to working with the Springfield Public School District. Please do not hesitate to contact me directly if you have any questions.

Sincerely,

John G. Flores, Ph.D.
Executive Director
jflores@usdla.org

8 Winter Street, Suite 508 • Boston, MA 02108-4705

Telephone: 800.275.5162 Fax: 617.399.1771

Website: www.usdla.org

EXHIBIT B-2



7-1-3

Ex. B-2

June 27, 2005

Dr. Joseph P. Burke, Superintendent of Schools
Springfield Public Schools
Central Office – P. O. Box 1410
195 State Street
Springfield, MA 01102-1410

*Bob Hamel
FYI*

Dear Dr. Burke:

The United States Distance Learning Association (USDLA) is pleased to receive and accept your grant application for funding assistance for the Springfield Public Schools District Digital Divide Project. We appreciate the opportunity to assist your Springfield Schools District with this very important and ambitious distance learning project. USDLA is a registered 501 (c) 3, and we provide these grants to support distance learning projects for K-12 school districts.

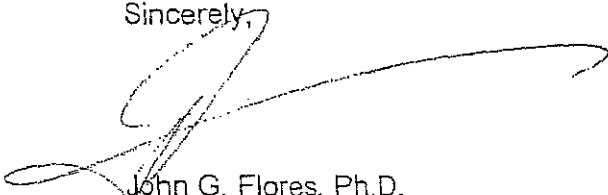
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Congratulations! We look forward to working with the Springfield Public Schools District. Please do not hesitate to contact me directly if you have any questions.

Sincerely,


John G. Flores, Ph.D.
Executive Director
jflores@usdla.org

8 Winter Street, Suite 508 • Boston, MA 02108-4705
Telephone: 800.275.5162 Fax: 617.399.1771
Website: www.usdla.org

EXHIBIT C

EX.C



Step 11: Obligation to Pay Non-discount Portion

Applicants are **required** to pay the non-discount portion of the cost of the goods and services to their service provider(s).

Service Providers are **required** to bill applicants for the non-discount portion. The Federal Communications Commission stated that requiring applicants to pay their share would ensure efficiency and accountability in the program:

Requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases they cannot use effectively. A percentage discount also encourages schools and libraries to seek the best pre-discount price and to make informed, knowledgeable choices among their options, thereby building in effective fiscal constraints on the account fund.

Applicants certify that they have complied with this requirement on FCC Forms 470 and 471. On the Form 470, applicants certify as follows in Item 23:

I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

On the Form 471, applicants certify as follows in Item 25:

The eligible schools and libraries listed in Block 4 of this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.

"Secured access" means that you can show that these funds are, or will be, part of your annual budget; or, if you are obtaining the funds from an outside source, that these funds have been promised to you. If you obtain these funds from an outside source, the funds must not come directly or indirectly from your service provider(s).

→ Some service providers and consultants offer to waive the non-discount portion, or to provide the applicant with a credit or with goods and services equivalent to the non-discount portion. It is a violation of program rules for service providers to waive or credit the applicant's share in any manner. Any special offers to reduce the price must be incorporated into the Form 471 "Total pre-discount amount" so that both the applicant and the Universal Service Fund benefit from such price negotiations. Please see the [Free Services Advisory](#) for additional guidance.

On the Service Provider Annual Certification Form (FCC Form 473), service providers certify in item 10 that they have billed the applicant for the applicant's non-discount portion:

The Service Provider Invoice Forms that are submitted by this service provider contain requests for universal service support for services which have been billed to the service provider's customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator.

Some service providers offer to help applicants locate grants to pay for their non-discount portion. Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants or organizations are independent of the service provider.

Step 10 Begin Receipt of Services

Last modified on 2/25/2008

EXHIBIT D-1

EX-D-1

Hamel, Robert

From: Hamel, Robert
Sent: Thursday, June 01, 2006 09:10
To: jlandsm@sl.universalservice.org
Cc: nicgatto@achievetelnet.com; Sheehan, Carey; cdornbush@achievetelnet.com; Hamel, Robert
Subject: SLC Invoice No.: 646466
Attachments: HPP5C7.tif

Mr. Landsman,

Springfield Public Schools has been awarded a three(3) year grant by the USDLA (see attached) which covers the required co-payment of Funding Request Number (FRN): 1352672. This grant is included as part of our contract with Achieve Telecom and has been referenced in all correspondence with the SLD.

Should you have any further question, please contact me.

Bob H.

From: PIAInvoicing [mailto:PIAInvoicing@sl.universalservice.org]
Sent: Thursday, June 01, 2006 8:04 AM
To: Charles Dornbush@1-781-893-9448
Cc: cdornbush@achievetelnet.com; ngatto@achievetelnet.com
Subject: SLC Invoice No.: 646466

Charles Dornbush & Nicholas Gatto
Achieve Telecom Network of MA, LLC
Submitter Invoice Number: SLD-0506
SLC Invoice No.: 646466
Funding Request Number (FRN): 1352672

Gentlemen;

I received copies of the checks you sent to me.

I now need a statement from the applicant, SPRINGFIELD PUBLIC SCHOOLS, stating the reason that their portion of the bill is being paid by a third party.

Please provide this information to me as soon as possible within the next 7 calendar days by Thursday, June 8, 2006. Failure to do so may result in a reduction or rejection of the invoice, without further request. If you have any questions or need additional time, please contact me.

Thank you for your cooperation and continued support of the Universal Service Program.

Sincerely,

Joel Landsman
Schools and Libraries Division
Program Integrity Assurance
Phone: 973-581-5157
FAX: 973-599-6539
jlandsm@sl.universalservice.org

Robert G. Hamel

Assistant to Superintendent
Springfield Public Schools
195 State St., P.O. Box 1410
Springfield, MA 01102-1410

SPS Office

- Voice: (413) 787-7870
- Fax: (413) 787-7211
- E-mail: hamelr@sps.springfield.ma.us
- E-Fax: (801) 729-5015

Home Office

- Voice: (413) 572-1255
- E-mail: hamelr@comcast.net
- E-Fax: (801) 729-5015



When writing or responding, please remember that the Secretary of State's Office has determined that email is a public record.

This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have received this email in error, and delete the copy you received.

Hamel, Robert

From: Nicholas Gatto [nicgatto@achievetelnet.com]
Sent: Thursday, June 01, 2006 08:53
To: Hamel, Robert
Subject: FW: SLC Invoice No.: 646466

Bob,

I am forwarding you an email I just received from Joel Landsman regarding invoices for our service in Springfield. He needs a statement explaining that the School District has received a grant from USDLA, and that is why USDLA is paying the school district portion.

Please do not hesitate to call me if you have any questions, or need anything.

Thank you in advance for your assistance.

Sincerely,

Nicholas Gatto - Director of Sales & Technical Support
Achieve Telecom Network
1-888-743-1144 <http://www.achievetelnet.com/>

From: PIAInvoicing [mailto:PIAInvoicing@sl.universalservice.org]
Sent: Thursday, June 01, 2006 8:04 AM
To: Charles Dornbush@1-781-893-9448
Cc: cdornbush@achievetelnet.com; ngatto@achievetelnet.com
Subject: SLC Invoice No.: 646466

Charles Dornbush & Nicholas Gatto
Achieve Telecom Network of MA, LLC
Submitter Invoice Number: SLD-0506
SLC Invoice No.: 646466
Funding Request Number (FRN): 1352672

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Thank you for your cooperation and continued support of the Universal Service Program.

Sincerely,

Joel Landsman
Schools and Libraries Division
Program Integrity Assurance

Phone: 973-581-5157
FAX: 973-599-6539
jlandsm@sl.universalservice.org

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EXHIBIT D-2

EX-D-2

Hamel, Robert

From: Hamel, Robert
Sent: Wednesday, July 19, 2006 07:30
To: 'Paul Stankus'
Cc: Robert Spiller; Joy Jackson; Sheehan, Carey; Hamel, Robert
Subject: RE: E-Rate 487623 – discrepancy in selective review documentation
Importance: High

Good Morning Mr. Stankus,

I'm sorry I missed your call yesterday but I never miss an email. In regard to your inquiry about my Selective Review response:

"During the selective review your school underwent in January 2006, you indicated that you had sufficient budgetary resources to pay the applicant portion of the request. No mention was made of a third party, USDLA, paying the applicant share.

Can you clarify if the grant from USDLA was inadvertently left out of the selective review documentation? "

I responded in the question to "see attached" and included a multi-page budgetary summary. The first page of the response was a spreadsheet showing on which page within our budget document you would find the funding for the co-payment for each application. The very last application in the spreadsheet was for "471 Application # 487623" and indicated in place of a page number the word "Attachment" in which I included a copy of the USDLA Grant Award that we received and a copy of the fax that Achieve Telecom had sent to us. Furthermore, I had also submitted a copy of all contracts for each application, including "471 Application # 487623" which references the Grant Award also.

I am faxing you a copy of the budgetary submission for your records. Thank you for your assistance in this matter and should you have any further questions, please feel free to contact me.

R. Hamel

Robert G. Hamel

Assistant to Superintendent
Springfield Public Schools
195 State St., P.O. Box 1410
Springfield, MA 01102-1410

SPS Office

- Voice: (413) 787-7870
- Fax: (413) 787-7211
- E-mail: hamelr@sps.springfield.ma.us
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From: Paul Stankus [mailto:pstankus@usac.org]
Sent: Tuesday, July 18, 2006 12:09
To: Joy Jackson; Hamel, Robert
Cc: Robert Spiller
Subject: E-Rate 487623 -- discrepancy in selective review documentation

Dear Mr, Hamel,

I am in the Ombudsman office at USAC attempting to resolve a discrepancy that has delayed us paying an invoice to Achieve Networks (inv# 654404).

During the selective review your school underwent in January 2006, you indicated that you had sufficient budgetary resources to pay the applicant portion of the request. No mention was made of a third party, USDLA, paying the applicant share.

Can you clarify if the grant from USDLA was inadvertently left out of the selective review documentation?

Thank you

Paul Stankus

Paul Stankus
Asst. Manager of Customer Service
USAC
2000 L St. NW, Suite 200
Washington, DC 20036
Phone: (202) 776-0200 x1618
Fax: (202) 776-0080
email: pstankus@universalservice.org

Hamel, Robert

From: Paul Stankus [pstankus@usac.org]
Sent: Tuesday, July 18, 2006 12:09
To: Joy Jackson; Hamel, Robert
Cc: Robert Spiller
Subject: E-Rate 487623 – discrepancy in selective review documentation
Follow Up Flag: Follow up
Flag Status: Red
Attachments: 20060706165810286 (3).pdf

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Can you clarify if the grant from USDLA was inadvertently left out of the selective review documentation?

Thank you

Paul Stankus

Paul Stankus
Asst. Manager of Customer Service
USAC
2000 L St. NW, Suite 200
Washington, DC 20036
Phone: (202) 776-0200 x1618
Fax: (202) 776-0080
email: pstankus@universalservice.org

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 3A

FedEx
Tracking
Number

8436 2604 8977

From Please print and press hard.

Date 2-11-04

Sender's FedEx
Account Number

1692-4894-0

Sender's Name Dr. Joseph Burke -

Phone 413 787-7087

Company SPRINGFIELD PUBLIC SCHOOLS

Address 195 STATE ST

Dept./Floor/Suite/Room

City SPRINGFIELD

State MA

ZIP 01103-1704

Your Internal Billing Reference

First 24 characters will appear on invoice.

OPTIONAL

To Recipient's Name Dr. John Flores Phone ()

Company United States Distance Learning Assoc.

Address 8 Winter St Suite 508

To "HOLD" at FedEx location, print FedEx address.

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address

City BOSTON State MA ZIP 02106-4705

Try online shipping at fedex.com

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.

Questions? Visit our Web site at fedex.com

or call 1.800.Go.FedEx® 800.463.3339.

0261688599

learning resources. Springfield Public Schools is requesting your assistance to ensure that our students are offered the best resources available.

Through funding from the e-Rate program, Springfield Public Schools has the opportunity to receive 87% of the required project funds; therefore, we have outlined in the attached grant application our request for the balance of required funding to ensure the success of this distance learning project for forty-six(46) schools within the district.

If you should need any further information, please contact me directly at burkej@sps.springfield.ma.us or 413-787-7087.

Thank you in advance for your e look forward to a long and prosperous partnership with USDLA.

Sincerely,

Dr. Joseph P. Burke
Superintendent of Schools

SPH11

Form
No.

0215

Sender's Copy

4a Express Package Service

☒ FedEx Priority Overnight
Next business morning☐ FedEx Standard Overnight
Next business afternoonPackages up to 150 lbs.
Delivery commitment may be later in some areas.
☐ FedEx First Overnight
Earliest next business morning
delivery to select locations☐ FedEx 2Day
Second business day

FedEx Envelope rate not available. Minimum charge: One-pound rate

☐ FedEx Express Saver
Third business day

4b Express Freight Service

☐ FedEx 1Day Freight*
Next business day☐ FedEx 2Day Freight
Second business day☐ FedEx 3Day Freight
Third business dayPackages over 150 lbs.
Delivery commitment may be later in some areas.

* Call for Confirmation.

5 Packaging

☒ FedEx Envelope*☐ FedEx Pak*

Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak

☐ Other

* Declared value limit \$500

6 Special Handling

☐ SATURDAY Delivery
Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select ZIP codes☐ HOLD Weekday
at FedEx Location
NOT Available for
FedEx First Overnight☐ HOLD Saturday
at FedEx Location
Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations

Include FedEx address in Section 3.

Does this shipment contain dangerous goods?

One box must be checked.

☐ No☐ YesAs per attached
Shipper's Declaration☐ YesShipper's Declaration
not required☐ Dry Ice

Dry Ice, 3, UN 1845

kg

Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging.

☐ Cargo Aircraft Only

Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender
Acct. No. in Section
will be billed.☐ Recipient☐ Third Party☐ Credit Card☐ Cash/CheckFedEx Acct. No.
Credit Card No.Exp.
Date

Total Packages

Total Weight

Total Declared Value*

1

\$

.00

*Our liability is limited to \$100 unless you declare a higher value. See back for details.

FedEx Use Only

8 Release Signature

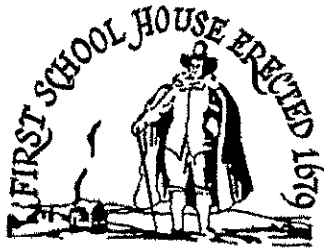
Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

SRS • Rev. Date 5/03 • Part #157810 • ©1994-2003 FedEx • PRINTED IN U.S.A.

447

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Central Office
P.O. Box 1410
195 State Street
Springfield, MA
01102-1410

THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Dr. Joseph P. Burke
Superintendent of Schools

Voice: (413) 787-7087
Fax: (413) 787-7171
E-mail: burkej@sps.springfield.ma.us

February 12, 2003

Dr. John Flores
The United States Distance Learning Association
8 Winter Street, Suite 508
Boston, MA 02108-4705

Dear Dr. Flores:

Please find enclosed the required grant application submittal for review of the Springfield Public Schools' Distance Learning Project for forty-six(46) schools.

From our meetings with Achieve Telecom Network of MA, I know that USDLA is focusing on the support of projects with the promise of ending the "digital divide" in urban and rural America. USDLA grants to school districts can provide state-of-the-art technology which encourages and enhances the classroom learning experience and offer advanced distance learning resources. Springfield Public Schools is requesting your assistance to ensure that our students are offered the best resources available.

Through funding from the e-Rate program, Springfield Public Schools has the opportunity to receive 87% of the required project funds; therefore, we have outlined in the attached grant application our request for the balance of required funding to ensure the success of this distance learning project for forty-six(46) schools within the district.

If you should need any further information, please contact me directly at burkej@sps.springfield.ma.us or 413-787-7087.

Thank you in advance for your e look forward to a long and prosperous partnership with USDLA.

Sincerely,

Dr. Joseph P. Burke
Superintendent of Schools



Grant Application for K-12 Distance Learning Projects

Project Title: Springfield Public Schools Digital Divide Project

Applicant Organization: Springfield Public School District

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7100

Fax: 413.787.7211

Applicant Organization Fiscal Officer or Authorizing Official

Name: Dr. Joseph P. Burke, Superintendent

Email: burkej@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 413.787.7211

Project Director (s)

Name: Donna Boivin, Director of Technology

Email: boivind@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7125

Fax: 413.787.6713

Name: Robert G. Hamel, Assistant to Superintendent

Email: hamelr@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 419.730.6652

Brief Description of Project :

One of our primary goals at Springfield Public Schools is to develop and implement projects that utilize state-of-the-art technology that can bridge the Digital Divide which we experience as a large urban school district. A critical need is to develop a network to provide distance learning and content delivery for our students and teachers.

SPS has contracted for this service with an eligible telecommunications provider, Achieve Telecom Network of MA, who offers a distance learning transmission service, called **AchieveXpress**. AchieveXpress is a comprehensive telecommunications service that permits video, audio and text to be transmitted from one site to one or more sites for use by emergency management, corporations, government facilities, educational institutions or libraries. The telecommunications services of AchieveXpress are used to electronically deliver training and instructional materials and other data to equipment provided by Achieve Telecom that is then connected to the Customer's local area network. Achieve Telecom provides AchieveXpress as a fully managed telecommunications service and can use existing Customer bandwidth for delivery or provision additional terrestrial or satellite connectivity. The AchieveXpress service qualifies for funding as a telecommunications service from the Federal E-rate program.

SPS has applied for funding of this project from the Federal E-rate program and we anticipate receiving financial coverage for 87% of the cost from that key resource. Therefore, we are asking the USDLA for a grant of 13% of the project cost to support our initiatives in implementing this service in forty-six (46) schools in our district.

Cost of One (1) Year Project:

Grant Request: \$222,046.50

Cost-share: \$1,486,003.50

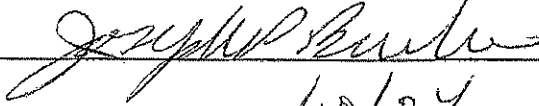
Total Cost of Project: \$1,708,050.00

Date you plan to begin making expenditures for project activities: July 1, 2004

Date you plan to finish making expenditures for project activities, if applicable: N/A

By signing and submitting a grant application, the authorizing official of the applicant institution is providing certification regarding compliance with federal nondiscrimination statutes, debarment and suspension, and fair labor standards.

Institution's Authorizing Official: _____



Date: _____

2/10/04

Please mail one (1) original copy to:

The United States Distance Learning Association
8 Winter Street, Suite 508
Boston, MA 02108-4705
Attn: Dr. John Flores

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 3B



Central Office
P.O. Box 1410
195 State Street
Springfield, MA
01102-1410

THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Dr. Joseph P. Burke
Superintendent of Schools

Voice: (413) 787-7087
Fax: (413) 787-7171
E-mail: burkej@sps.springfield.ma.us

February 14, 2005

Dr. John Flores
Executive Director
United States Distance Learning Association
8 Winter Street
Suite 508
Boston, MA 02108

RE: Springfield Public Schools Distance Learning Project

Dear Dr. Flores:

Springfield Public Schools is pleased to submit the attached grant application to United States Distance Learning Association (USDLA). We look forward to your partnership in our efforts to provide an effective distance-learning project for our schools.

We request that USDLA consider our request for additional grant funding for our 2005 E-rate project for distance learning and telecommunications. As you know, E-rate will pay a significant portion of the required funds need to secure the technology resources desired for our distance learning and telecommunications project.

Thank you for your interest in Springfield Public Schools We envision this exciting distance learning project becoming a reality for our teachers and students and we appreciate your assistance in helping us achieve our vision.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph P. Burke".

Dr. Joseph P. Burke
Superintendent of Schools



Grant Application for K-12 Distance Learning Projects

Project Title: Springfield Public Schools Digital Divide Project

Applicant Organization: Springfield Public School District

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7100

Fax: 413.787.7211

Applicant Organization Fiscal Officer or Authorizing Official

Name: Dr. Joseph P. Burke, Superintendent

Email: burkej@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 413.787.7211

Project Director (s)

Name: Donna Boivin, Director of Technology

Email: boivind@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7125

Fax: 413.787.6713

Name: Robert G. Hamel, Assistant to Superintendent

Email: hamelr@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 413.787.6713



**THE PUBLIC
SCHOOLS of
SPRINGFIELD,
MASSACHUSETTS**

195 State St.

P.O. Box 1410

Springfield, MA 01102-1410



**The United States Distance Learning Association
8 Winter Street, Suite 508
Boston, MA 02108-4705
Attn: Grant Administrator**



Grant Application for K-12 Distance Learning Projects

Project Title: Springfield Public Schools Digital Divide Project

Applicant Organization: Springfield Public School District

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7100

Fax: 413.787.7211

Applicant Organization Fiscal Officer or Authorizing Official

Name: Dr. Joseph P. Burke, Superintendent

Email: burkej@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 413.787.7211

Project Director (s)

Name: Donna Boivin, Director of Technology

Email: boivind@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7125

Fax: 413.787.6713

Name: Robert G. Hamel, Assistant to Superintendent

Email: hamelr@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 419.730.6652

Co-Sponsoring Organizations (if any)

(N/A)

Brief Description of Project :

One of our primary goals at Springfield Public Schools is to develop and implement projects that utilize state-of-the-art technology that can bridge the Digital Divide which we experience as a large urban school district. A critical need is to develop a network to provide distance learning and content delivery for our students and teachers.

SPS has contracted for this service with an eligible telecommunications provider, Achieve Telecom Network of MA, LLC., who offers a distance learning transmission service, called **AchieveXpress**. AchieveXpress is a comprehensive telecommunications service that permits video, audio and text to be transmitted from one site to one or more sites for use by emergency management, corporations, government facilities, educational institutions or libraries. The telecommunications services of AchieveXpress are used to electronically deliver training and instructional materials and other data to equipment provided by Achieve Telecom that is then connected to the Customer's local area network. Achieve Telecom provides AchieveXpress as a fully managed telecommunications service and can use existing Customer bandwidth for delivery or provision additional terrestrial or satellite connectivity. The AchieveXpress service qualifies for funding as a telecommunications service from the Federal E-rate program.

SPS has applied for funding of this project from the Federal E-rate program and we anticipate receiving financial coverage for 87% of the cost from that key resource. Therefore, we are asking the USDLA for a grant of 13% of the project cost to support our initiatives in implementing this service in forty-six (46) schools in our district.

Cost of One (1) Year Project:

Grant Request: \$217,347.00 Cost-share: \$1,454,553.00 Total Cost of Project: \$1,671,900.00

Date you plan to begin making expenditures for project activities: July 1, 2005

Date you plan to finish making expenditures for project activities, if applicable: N/A

By signing and submitting a grant application, the authorizing official of the applicant institution is providing certification regarding compliance with federal nondiscrimination statutes, debarment and suspension, and fair labor standards.

Institution's Authorizing Official: _____



February 14, 2005

Date: _____

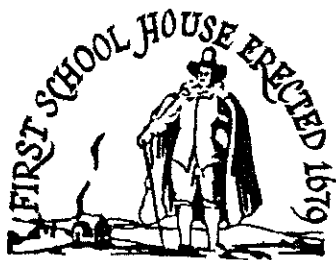
Please mail two (2) original copy to:

The United States Distance Learning Association
8 Winter Street, Suite 508
Boston, MA 02108-4705
Attn: Grant Administrator

Or, email to Grant Administrator at grantadmin@usdla.org.

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 3C



Central Office
P.O. Box 1410
195 State Street
Springfield, MA
01102-1410

THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Dr. Joseph P. Burke
Superintendent of Schools

Voice: (413) 787-7087
Fax: (413) 787-7171
E-mail: burkej@sps.springfield.ma.us

January 17, 2007

Dr. John Flores, Executive Director
United States Distance Learning Association
8 Winter Street, Suite 508
Boston, MA 02108

RE: Springfield Public Schools Distance Learning Project

Dear Dr. Flores:

Please find attached the Grant Application (2 copies) from Springfield Public Schools for funding from the USDLA Digital Divide Fund.

We appreciate your support of K-12 projects through this grant program that offers a funding resource to assist us in providing state-of-the-art technology that enhances the classroom learning experience. At this time, we request your assistance to enable advance learning resources for all of our students and teachers.

Through funding from the ERATE program, Springfield Public Schools has the opportunity to receive a percentage of the required project funds; therefore, we have outlined in the attached grant application, our request for the balance of required funding to ensure the success of this Distance Learning project for our schools/students.

Please find enclosed all supporting documentation that is required for your immediate consideration of our grant request. If you need further assistance, you may reach me at 413-787-7087 or burkej@sps.springfield.ma.us.

Sincerely,

Dr. Joseph P. Burke
Superintendent of Schools



Grant Application for K-12 Distance Learning Projects

Project Title: Springfield Public Schools Digital Divide Project

Applicant Organization: Springfield Public School District

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7100

Fax: 413.787.7211

Applicant Organization Fiscal Officer or Authorizing Official

Name: Dr. Joseph P. Burke, Superintendent

Email: burkej@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 413.787.7211

Project Director (s)

Name: Donna Boivin, CIO

Email: boivind@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7125

Fax: 413.787.7211

Name: Robert G. Hamel, Assistant to Superintendent

Email: hamelr@sps.springfield.ma.us

Street Address: 195 State Street

City, State, Zip: Springfield, MA 01102-1410

Telephone: 413.787.7087

Fax: 413.787.7211

Co-Sponsoring Organizations (if any)

(N/A)

Brief Description of Project :

One of our primary goals at Springfield Public Schools is to develop and implement projects that utilize state-of-the-art technology that can bridge the Digital Divide which we experience as a large urban school district. A critical need is to develop a network to provide distance learning and content delivery for our students and teachers.

SPS has contracted for this service with an eligible telecommunications provider, **Achieve Telecom Network of MA, LLC.**, who offers a distance learning transmission service, called **AchieveXpress**. AchieveXpress is a comprehensive telecommunications service that permits video, audio and text to be transmitted from one site to one or more sites for use by emergency management, corporations, government facilities, educational institutions or libraries. The telecommunications services of AchieveXpress are used to electronically deliver training and instructional materials and other data to equipment provided by Achieve Telecom that is then connected to the Customer's local area network. Achieve Telecom provides AchieveXpress as a fully managed telecommunications service and can use existing Customer bandwidth for delivery or provision additional terrestrial or satellite connectivity. The AchieveXpress service qualifies for funding as a telecommunications service from the Federal E-rate program.

SPS is applying for funding of this project from the Federal E-rate program and we anticipate receiving financial coverage for 88% of the cost from that key resource. Therefore, we are asking the USDLA for a grant of 12% of the project cost to support our initiatives in implementing this service in fifty-one (51) schools in our district.

Cost of One (1) Year Project:

Grant Request: \$221,400.00 Cost-share: \$1,623,600.00 Total Cost of Project: \$1,845,000.00

Date you plan to begin making expenditures for project activities: July 1, 2007

Date you plan to finish making expenditures for project activities, if applicable: N/A

By signing and submitting a grant application, the authorizing official of the applicant institution is providing certification regarding compliance with federal nondiscrimination statutes, debarment and suspension, and fair labor standards.

Institution's Authorizing Official: _____
Dr. Joseph P. Burke, Superintendent of Schools

Date: _____ January 16, 2007

Please mail two (2) original copy to:

The United States Distance Learning Association
8 Winter Street, Suite 508
Boston, MA 02108-4705
Attn: Dr. John Flores

**Springfield, MA Appeal to the
Federal Communications Commission**

ATTACHMENT 4A

**SPRINGFIELD PUBLIC SCHOOLS
TECHNOLOGY SERVICES AGREEMENT**

THIS AGREEMENT made by and between the CITY OF SPRINGFIELD, a municipal corporation within the County of Hampden and the Commonwealth of Massachusetts, with its principal offices at 36 Court Street, Springfield, Massachusetts 01103, acting by and through its School Committee and Chief Procurement Officer with the approval of its Mayor, (hereinafter called the "City"), and **Achieve Telecom Network of MA, LLC**, a Nevada LLC located at: **40 Shawmut Road, Suite 200, Canton, MA 02021**, (hereinafter referred to as the "Vendor").

RECITALS

WHEREAS, the City through its School Committee and Chief Procurement Officer is seeking a vendor to provide technology services as more specifically defined in Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter "Technology Services") to: Springfield Public Schools and

WHEREAS, the Vendor has the necessary qualifications, expertise, experience and ability to provide the Technology Services on behalf of the City; and

NOW THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. The Vendor shall, in a professional and proper manner, provide Technology Services in accordance with the terms and conditions of this Agreement and pursuant to Commonwealth of Massachusetts State Contract(s) identified as: MA(OSD) ITS07 (hereinafter referred to as "the State Contract").

1. In accordance with the terms and conditions of this Agreement and the State Contract, the Vendor represents that it is qualified to perform the Technology Services and has obtained all requisite licenses and permits to perform the Technology Services.
2. The Vendor shall attend all necessary conferences and meetings with the City during all stages of the Technology Services.
3. The Vendor and City recognize that the technology industry is constantly evolving and that modifications to the Technology Services may be required and therefore, agree that the Vendor shall consult with the City through its designee Robert G. Hamel, Assistant to the Superintendent, and receive his prior written approval before making any allowable modifications to the Technology Services defined in Exhibit "A" and shall conform its Technology Services to such approved modifications.

2. TIME:

The Vendor hereby agrees with the City to furnish & deliver Technology Services for a period of one (1) year commencing on July 01, 2004 and shall be completed by September 30, 2006, (pursuant to Exhibit B) unless amended by the parties hereto.

3. **COMPENSATION, PAYMENT AND BILLING PROCEDURE:**

- A. It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement and that the funding for this contract shall be in the amount of:

One Million Seven-Hundred Eight Thousand Fifty Dollars and 00/00 (\$ 1,708,050.00)

and shall be provided for as specified in Sections B,C,D,& E detailed below.

- B. If the City is eligible for a Universal Service Fund Discount for the Technology Services from the Schools and Library Division (hereinafter "S.L.D.") of the Universal Service Administrative Company (hereinafter "USAC") which is a non-profit corporation which administers the Universal Service Fund for the Federal Communication Commission ("FCC"), payment for the Technology Services will be made either by the Service Provider Invoice method ("SPI") or a Billed Entity Applicant Reimbursement ("BEAR") method as specified by USAC under the FCC "ERATE" program. Under the "SPI" method of reimbursement, the City will pay only its discounted share to the Vendor; the balance of the invoice is paid or credited to the Vendor by USAC. In some situations the SPI method of payment is impractical. In such cases, the City may choose the BEAR method of payment. Under the BEAR method, the City will pay Vendor's invoice in advance of the City receiving the USAC reimbursement. Under the BEAR method, when and if a USAC funding commitment letter is later obtained, the City will request a reimbursement from USAC. **Upon receipt of the BEAR, the Vendor must promptly remit that sum to the City. If the BEAR method is used, once the Vendor obtains the reimbursement from USAC, the Vendor acts merely as a pass-through and must reimburse the City its money. The parties agree that any BEAR Reimbursement is the absolute property of the City and that the Vendor has no legal or equitable right to the BEAR Reimbursement.**

- Pursuant to Exhibit C: **ERATE Funding Commitment Letter – 06/14/2005**

- C. *Pursuant to Vendor's quote attached hereto as Exhibit "A" and pursuant to applicable Commonwealth of Massachusetts Blanket pricing, USDLA (United States Distance Learning Association) agrees to compensate Vendor for Technology Services less any monies awarded through direct payment by S.L.D. to the Vendor as referenced in this Agreement and consistent with applicable federal statutes, regulations, and USAC's rules and manual.

- D. *Payments will be made pursuant to paragraph 3.C of this Agreement only upon the submission of an invoice to the City that clearly states the services provided, including the date and nature of the services rendered. Invoices must be submitted in triplicate and mailed to:

**United States Distance Learning Association
Attn: USDLA Digital Divide Fund
8 Winter Street, Suite 508
Boston, MA 02108-4705**

- *Pursuant to:
 - Exhibit D: **USDLA Co-Pay Funding Commitment – 03/18/2004**
 - Exhibit E: **USDLA Co-Pay Funding Confirmation – 08/31/2005**

- E. The City shall not be liable for any services, expenses, or costs in connection with the Technology Services in excess of the amount currently appropriated therefore under this Agreement or any amendments hereto.

4. **TERMINATION:**

The City may terminate this Agreement for any reason prior to the date of expiration with 15 days written notice. In the event of termination of this Agreement, the sole remedy available to Vendor is the amount of fees for Technology Services rendered but not yet paid.

5. **REMEDIES OF THE CITY:**

If Vendor shall provide services to the City in a manner which are not to the satisfaction of the City, City may suspend or terminate payment to Vendor in whole or in part, until the Technology Services described in Exhibit A are completed to the satisfaction of the City and in addition may:

- A. require the Vendor to provide Technology Services which are satisfactory to the City at no additional cost to the City, or
- B. obtain services at the cost of the Vendor in substitution for those due from the Vendor, or
- C. terminate this Agreement.

6. **LIABILITY AND INSURANCE:**

- A. The Vendor shall at its own expense shall provide, maintain and require its subcontractors to provide and maintain all insurance for its employees, including disability, worker compensation and unemployment compensation, in accordance with the statutory requirement of any state where the work is performed. The Vendor is an independent contractor and is not an employee or agent of the City.
- B. The Vendor shall indemnify and hold harmless the City against any and all liability, lost damages, costs or expense for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the Technology Services performed under this Agreement by reason: of any negligent action/inaction or willful misconduct of the Vendor, its agents or persons employed by the Vendor, or any of its subcontractors.

7. **SUCCESSORS AND ASSIGNS:**

- A. The City and the Vendor each binds itself, and legal representatives to such other party with respect to all covenants of this Agreement.
- B. Neither the City nor the Vendor shall assign any interest in this Agreement or transfer any interest in the same without prior written approval of the other party thereto.

8. EQUAL EMPLOYMENT OPPORTUNITY:

During the performance of this Agreement, the Vendor agrees as follows:

- A. The Vendor will not discriminate against any client or applicant for services because of race, color, religion, sex, sexual orientation, disability, family status or national origin. The Vendor will take affirmative action to ensure that clients, applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, disability, family status or national origin.
- B. In the event of the Vendor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further City contracts.

9. CONFLICT OF INTEREST:

- A. The Vendor further covenants that in the performance of this Agreement that it does not have any interest, direct or indirect, which will conflict in any manner or degree with the performance of the services hereunder, as set forth in chapter 268A of the Massachusetts General Laws.
- B. No officer or employee of the City shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested. No officer or employee of the City shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

10. APPLICABLE LAW AND EXCLUSIVE FORUM:

- A. This agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- B. The parties hereto expressly agree that the sole and exclusive place, status and forum of this agreement shall be the City of Springfield, Hampden County, Massachusetts. All actions and legal proceedings which in any way relate to this agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City of Springfield, Hampden County, Massachusetts. It is the express intention of the parties to this agreement that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this agreement shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Springfield, Massachusetts or the United States District Court sitting in Springfield, Massachusetts.

11. COMPLIANCE WITH LAWS:

The Vendor shall comply with all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies.

12. EFFECTIVE DATE:

This Agreement becomes effective upon execution by the Mayor of the City of Springfield and, if subject to USAC reimbursement, (a) the approval of the maximum allowable funding by the S.L.D. as referenced in 3 above or (b) an authorizing vote of the Springfield School Committee to proceed at less than maximum allowable funding by the S.L.D.

13. **EXTENT OF AGREEMENT:**

This Agreement represents the entire and integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Vendor.

IN WITNESS WHEREOF, the CITY OF SPRINGFIELD, acting by and through its School Committee and Chief Procurement Officer, with the approval of its Mayor, have executed this Agreement as a seal instrument on the day and year dated below.

VENDOR: Achieve Telecom Network of MA, LLC.

By: _____

Approved as to Form:

Associate City Solicitor 10/24/05
Assistant

Approved as to appropriation:

\$1,708,050.00 ZERO

FUND: N/A

City Auditor

REVIEWED AND APPROVED:
SPRINGFIELD FINANCE CONTROL BOARD
BY ITS DESIGNEES:

CHARLES V. RYAN, MAYOR

ALAN LEBOVIDGE, CHAIRMAN

CITY OF SPRINGFIELD

Superintendent of Schools

SCHOOL COMMITTEE

Chief Procurement Officer

Mary Izambazakis
Chief Financial Officer

Date Signed: 10/26/05

Date Signed: 10/27/05

EXHIBIT A

COST PROPOSAL

PAYMENT AND SCHEDULE

ATN will invoice the SLD and SPS according to the rates and regulations shown below and defined in the tariff attached to this Cost Proposal. The SLD will be invoiced directly for the amounts covered under the E-Rate discount program, and SPS will be invoiced for the remainder amount. A detailed schedule for these discounts as provided by the E-Rate program is included in the attached tariff. Over the term of this Contract, ATN shall commit to provide SPS with the best rate available for any customer of this service, and shall, in no case, exceed the rate currently published in the attached tariff.

Rate Schedule

The following recurring rates for the Basic DLTS service apply per Customer Site for all customers:

Service	Installation	Monthly charge per Customer Site
DLTS with Satellite Overlay Network	\$150	\$3,750
DLTS without Satellite Overlay Network	\$150	\$3,000

Locations and Installation

ATN will install DLTS with a satellite overlay network at 1 school site, Springfield Technology HS, State St. and DLTS without satellite overlay network at 46 Springfield school sites. Other locations may be added at the discretion of SPS in the first year or in subsequent years of this contract.

ATN will begin installation of the On-premise Equipment within thirty (30) days of SPS' receipt of a Funding Commitment Letter from the SLD if such letter is received on or after June 30, 2004.

At its own risk and with the approval of a schedule by SPS, ATN may begin installation at any time after the receipt of a Funding Commitment Letter from the SLD by SPS, even if the installations occur prior to the start of service, defined as July 1, 2004.

Total Cost

As a fully managed telecommunications service and assuming that the service begins on July 1, 2004, the 12 month total cost for DLTS to SPS is \$1,708,050.

EXHIBIT B

USAC

Universal Service Administrative Company
Schools & Libraries Division

FORM 500 NOTIFICATION LETTER
(Funding Year 2004: 07/01/2004 - 06/30/2005)

August 08, 2005

Achieve Telecom Network of MA, LLC
Joy Jackson
40 Shawmut Rd. Suite 200
Canton, MA 02021

Re: Service Provider Name: Achieve Telecom Network of MA, LLC
Service Provider Identification Number: 143026761

This letter is to notify you that the Schools and Libraries Division (SLD) of the Universal Service Administrative Company has received and accepted FCC Form(s) 500 (Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form) from Billed Entities who filed FCC Form(s) 471 listing your company's Service Provider Identification Number (SPIN). This Form 500 information will affect information previously reported to you.

As described in the "Funding Commitment Synopsis Explanation" below, this letter confirms several important pieces of information from each Form 500. Each Funding Commitment Synopsis relates to a particular Funding Request Number (FRN) and will set forth the modifications requested by the applicant for that FRN. (An FRN is the number assigned to each Block 5 of the applicant's Form 471 once an application has been processed.) Changes may include:

- change of the previously reported Service Start Date;
- change of the previously reported Contract Expiration Date;
- cancellation of an FRN;
- reduction of an FRN.

NOTICE ON SERVICE START DATE

There may be some situations where the New Service Start Date as reflected on this letter has been changed from what the applicant indicated on the Form 500. Such changes are made by the SLD to be sure that the service start date is in compliance with program rules. You will know that a change has been made if there is an asterisk (*) next to the New Service Start Date. It is important that you and the 471 applicant both recognize that the SLD should be invoiced and the SLD may direct disbursement of the discounts only on eligible, approved services actually delivered and installed after the Service Start Date indicated on this letter.

Any appeal of the change in Service Start Date detailed in a Form 500 Notification Letter must be received within 60 days of the date on the Form 500 Notification Letter. (Information on the appeal process can be found in "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org) Therefore, prompt

EXHIBIT B

communication with your customer is essential.

NOTICE ON INVOICING

INVOICING DEADLINES: After a Form 486 has been properly filed, the SLD must receive an invoice from either the applicant or the service provider in order to make payments for approved discounts on eligible services. Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, is filed by the applicant; Form 474, Service Provider Invoice Form, is filed by the service provider. Invoices must be postmarked no later than 120 calendar days after the last date to receive service or 120 calendar days after the date of the Form 486 Notification Letter, whichever is later. If an invoice is postmarked after the later of those two dates, payment will be denied.

Please note that the SLD encourages service providers to work with their customers to establish whether discounts will appear on bills or whether customers prefer a reimbursement process. The SLD will process either reimbursements based on Form 472 (BEAR) or discounts based on Form 474 (SPIF) for a given FRN. Once established, however, the selected process - SPIFs or BEARs - must be used consistently for the entire Funding Year.

NOTE: The SLD will base the billing mode (reimbursement or discounting) on the first invoice type that it processes for payment. It is therefore imperative for the service provider and the customer to establish together the preferred invoicing mode.

EXPLANATION OF INFORMATION PROVIDED IN THE FORM 500 NOTIFICATION LETTER

On the following pages is a list of FRNs under which you are providing service and for which the applicant has notified us that it is making a modification. To help you understand this list, the following definitions are provided. Most of these are identical to the definitions that were included in the Funding Commitment Decision Letters (FCDL) earlier sent to you.

Funding Request Number (FRN): A Funding Request Number is assigned by the SLD to each Block 5 on the applicant's Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount requests submitted on a Form 471.

Form 471 Application Number: A unique identifier assigned to a Form 471 application by the SLD.

Name of 471 Billed Entity Applicant: The name of entity that applied to the SLD, from Item 1 of the Form 471.

Entity Number: A unique identifier assigned by the SLD for the Billed Entity applicant.

Name of Form 500 Contact Person: The name of the contact person from Block 1 of the Form 500.

Form 500 Contact Person Information: Mailing address from Block 1, Item 5 of the Form 500, telephone number, fax number, and e-mail address.

Funding Year: The funding year for which discounts have been approved. Funding years begin on July 1 and end on the following June 30. Funding years are designated by the calendar year in which they begin.

Billing Account Number: The account number that you have established with your customer for billing purposes. This will be present only if a Billing Account Number was provided on Form 471.

Service Start Date Change (SHOWN ONLY IF REQUESTED): The New Service Start Date as indicated on the Form 500. If this date is marked with an asterisk, it was changed by SLD from what the applicant indicated on the Form 500 to be in compliance with program rules and an explanation for the change has been provided. This date as shown is controlling and USAC will not reimburse discounts on services delivered prior to this date.

Service Start Date Change Explanation (SHOWN ONLY IF RELEVANT): If the Service Start Date is marked with an asterisk, this field will appear to explain why SLD changed the date. One of the following explanations may appear:

AVSCD: The Service Start Date may not be before the Allowable Vendor Selection/Contract Date (AVSCD) from the Form 470 cited for this FRN on the Form 471. If the applicant indicated an earlier SSD on the Form 500, SLD changed the SSD to the AVSCD.

EXHIBIT B

486 DEADLINE: Applicants can not use the Form 500 to change the Service Start Date from an adjusted Service Start Date on the Form 486. If the applicant indicated an earlier SSD on the Form 500, SLD changed the SSD to what was reflected on the Form 486 Notification letter sent to both the applicant and the service provider.

Contract Expiration Date Change (SHOWN ONLY IF REQUESTED): The Original Contract Expiration Date as shown on the Form 471 and the New Contract Expiration Date. A contract extension does not result in more money being committed to the ERN; the funding remains at the level provided in the Funding Commitment Decision Letter, but an extension may provide more time for the provision of service.

Cancel ERN (SHOWN ONLY IF REQUESTED): The Original Commitment Amount as shown in the Funding Commitment Decision Letter (FCDL) and a New Commitment Amount of \$0.00. Canceling an ERN is an irrevocable action.

Reduce ERN (SHOWN ONLY IF REQUESTED): The Original Commitment Amount as shown in the Funding Commitment Decision Letter (FCDL) and the New Commitment Amount After Reduction. The New Commitment Amount will become the new cap for the ERN. Reducing an ERN is an irrevocable action.

EXHIBIT B

FORM 500 NOTIFICATION LETTER FUNDING COMMITMENT SYNOPSIS (Funding Year 2004)

Service Provider Name: Achieve Telecom Network of MA, LLC
Service Provider Identification Number: 143026761

Funding Request Number: 1207981

Form 471 Application Number: 433768

Name of 471 Applicant: SPRINGFIELD PUBLIC SCHOOLS

Entity Number: N/A

Name of Form 500 Contact Person: ROBERT G. HAMEL

Form 500 Contact Person Information: 195 STATE STREET P.O. BOX 1410, SPRINGFIELD, MA

01102-1410, 413-787-7870, 413-787-7211,

HAMELR@SPS.SPRINGFIELD.MA.US

Funding Year 2004: 07/01/2004 - 06/30/2005

Billing Account Number: N/A

Contract Expiration Date Change: 06/30/2005; 09/30/2006

Message

EXHIBIT B

Page 1 of 1

HAMEL ROBERT G

From: SLD Problem Resolution [sld-problem-resolution@pearson.com]
Sent: Friday, August 26, 2005 17:33
To: HAMEL ROBERT G
Subject: RE: Form 500 - Application ID: NONE - PR Case ID#: 21-280079

Robert,

Your form 500 is certified and you can proceed with the next step.

Thanks,
Cathy Carley

-----Original Message-----

From: HAMEL ROBERT G [mailto:hamelr@sps.springfield.ma.us]
Sent: Friday, August 26, 2005 9:07 AM
To: SLD Problem Resolution
Cc: nicgatto@achievetelnet.com; SHEEHAN CAREY G; HAMEL ROBERT G
Subject: RE: Form 500 - Application ID: NONE - PR Case ID#: 21-280079
Importance: High

This email may contain confidential material. If you were not an intended recipient, Please notify the sender and delete all copies. We may monitor email to and from our network.

**** Transmit Conf. Report ****

P.1

Jan 6 2006 15:08

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
919735996542	NORMAL	6,15:08	2'14"	6	* O K	



Central Office
P.O. Box 1410
195 State Street
Springfield, MA
01102-1410

THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Robert G. Hamel
Assistant to Superintendent

Office Voice: (413) 787-7870
B-Fax: (801) 729-5015
Office Fax: (413) 787-7211
Home Office: (413) 572-1255
E-mail: hamelr@sps.springfield.ma.us

FAX TRANSMISSION

DATE: January 06, 2006

TO: Letter of Appeal
Schools & Libraries Division
471 App #: 433768 / FRN #: 1207981

FAX Number: 973-599-6542

Number of FAX Pages: (including cover sheet) 6

Please be advised that I am in receipt of your letter dated 12/30/2005 (see attached) and a formal appeal packet was FedEx'd to the SLD on 01/04/2006. A copy of the appeal letter is attached for reference purpose. Should you have any questions, please do not hesitate to contact me.

Universal Service Administrative Company
Schools & Libraries Division

SUPPLEMENTAL FORM 471 APPLICATION

APPROVAL LETTER

December 30, 2005

**Robert Hamel
Springfield Public Schools
195 State Street
P. O. Box 1410
Springfield, MA 01102-1410**

Form 471 Application Number: 433768

Lowell Etzler

This letter is your notification that the FCC Form 471, *Services Ordered and Certification Form* you submitted for **Minor Modifications** was received and is not approved. You are not authorized to make the changes identified in your submission.

FRN(s): 1207981

Decision: Not Approved

Your request is not approved for the following reason(s):

- The applicant did not fully respond to the Administrator's request for information.

Please keep this letter for your records. This is the only notification you will receive indicating the processing of the above-submitted form.

If you have any questions regarding the above information, please write to us at "SLD, Box 125-
Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981."

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) e-mail address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the decision letter and the decision you are appealing:
 - appellant name,
 - applicant or service provider name,
 - BEN and/or SPIN,
 - application or form number as assigned by the SLD,
 - name of the letter and funding year (both are located at the top of the letter), AND
 - the exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by the SLD's decision. If you are a service provider, please provide a copy of your appeal to the applicant affected by the SLD's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to the SLD by e-mail, use the "Submit a Question" feature on the web site at www.sl.universalservice.org. Click "Continue," choose "Appeals" from the Topics Inquiry on the lower portion of your screen, and click "Go" to begin your appeal submission. The system will prompt you through the process. The SLD will automatically reply to incoming e-mails to confirm receipt.

To submit your appeal to the SLD by fax, fax your appeal to (973) 599-6542.

To submit your appeal to the SLD on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road

Thank you for your interest in the Schools and Libraries Universal Service Program.



Central Office
P.O. Box 1410
195 State Street
Springfield, MA
01102-1410

THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Robert G. Hamel
Assistant to Superintendent

Office Voice: (413) 787-7870
E-Fax: (801) 729-5015
Office Fax: (413) 787-7211
Home Office: (413) 572-1255
E-mail: hamelr@sps.springfield.ma.us


FAX TRANSMISSION

DATE: January 06, 2006
TO: Letter of Appeal
Schools & Libraries Division
471 App #: 433768 / FRN #: 1207981

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Robert G. Hamel
Assistant to Superintendent

This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have received this fax in error, and destroy the copy you have received.

Universal Service Administrative Company
Schools & Libraries Division

SUPPLEMENTAL FORM 471 APPLICATION

APPROVAL LETTER

December 30, 2005

**Robert Hamel
Springfield Public Schools
195 State Street
P. O. Box 1410
Springfield, MA 01102-1410**

COPY

Form 471 Application Number: 433768

Lowell Etzler

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1. Include the name, address, telephone number, fax number, and (if available) e-mail address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the decision letter and the decision you are appealing:
 - appellant name,
 - applicant or service provider name,
 - BEN and/or SPIN,
 - application or form number as assigned by the SLD,
 - name of the letter and funding year (both are located at the top of the letter), AND
 - the exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
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Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road

Thank you for your interest in the Schools and Libraries Universal Service Program.



Central Office
P.O. Box 1410
195 State Street
Springfield, MA
01102-1410

THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Dr. Joseph P. Burke
Superintendent of Schools

Voice: (413) 787-7087
Fax: (413) 787-7171
E-mail: burkej@sps.springfield.ma.us

Date: January 03, 2006

To: Letter of Appeal
Schools & Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 01981

Re: APPEAL
Form 471 Application Number: 433768
FRN #: 1207981
Funding Year: 2004-2005
Billed Entity Number: 120089

COPY

FedEx Express US Airbill

FedEx Tracking Number 8524 9424 5303

1 From Please print and cross out
Date 1-4-06 Sender's FedEx Account Number 1492-4894-0
Sender's Name Robert Hume Phone (413) 787-7870
Company SPRINGFIELD PUBLIC SCHOOLS
Address 195 STATE ST
City SPRINGFIELD State MA ZIP 01103-1704
2 Your Internal Billing Reference OPTIONAL
3 To Recipient's Name Letter of Appeal
Schools & Libraries Div.
Box 125 - Correspondence Unit
80 South Jefferson Rd
Whippany NJ ZIP 01981

Sender's Copy
4a Express Package Service
FedEx Priority Overnight
FedEx Standard Overnight
FedEx First Overnight
FedEx 2Day
FedEx Express Saver
4b Express Freight Service
FedEx 1Day Freight
FedEx 2Day Freight
FedEx 3Day Freight
5 Packaging
FedEx Envelope
FedEx Pak
FedEx Box
FedEx Tube
Other
6 Special Handling
SATURDAY Delivery
HOLD Weekday at FedEx Location
HOLD Saturday at FedEx Location
Does this shipment contain dangerous goods?
7 Payment Bill to:
Sender
Recipient
Third Party
Credit Card
Cash/Check
8 Sign to Authorize Delivery Without a Signature

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By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

466

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Central Office
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THE PUBLIC SCHOOLS of SPRINGFIELD, MASSACHUSETTS

Dr. Joseph P. Burke
Superintendent of Schools

Voice: (413) 787-7087
Fax: (413) 787-7171
E-mail: burkej@sps.springfield.ma.us

Date: January 03, 2006

To: Letter of Appeal
Schools & Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 01981

Re: **APPEAL**
Form 471 Application Number: 433768
FRN # 1207981
Funding Year: 2004-2005
Billed Entity Number: 120089

Cc: Mayor Charles V. Ryan, City of Springfield, MA
David P. Driscoll, MA Commissioner of Education
U.S. Senator Edward M. Kennedy
U.S. Senator John F. Kerry
U.S. Representative Richard E. Neal

Contact: Robert G. Hamel
Assistant to Superintendent
Springfield Public Schools
E-mail: hamelr@sps.springfield.ma.us
Phone: (413) 787-7870
Fax: (413) 787-7211

COPY

On November 30, 2005 Springfield Public Schools filed a "Service Substitution Letter" (see attached) against the FRN listed above and the vendor was notified not to proceed until an approval was issued. The approval (see attached) was issued on December 05, 2005 and the vendor was notified to proceed. On December 15, 2005, we received an email (see attached) from Mr. Richard Nyquist, SLD Service Substitution Manager, indicating the following:

The referenced request addresses FRN# 1207981, for which the funding has been reduced to \$6,063 (a pre-discount amount of \$7,050). Your request is to replace \$345,000 of equipment, an amount that far exceeds the approved funding level. Is it possible your request is for the wrong App#/FRN#? If not, you may want to adjust your request to align with the amount of funding or cancel the request entirely. Please advise as to how you want to proceed.

Upon further discussion with Mr. Nyquist, it was determined that on November 30, 2005 a revised FRN had been issued based on a Form 500 (date extension requests due to a "very late award") that Springfield Public Schools had filed earlier. However, the revised FRN, which we never received a copy of until the email of December 21, was contradictory to the directions we and the vendor had received from the SLD. This FRN was for both a Non-recurring charge and for 12

COPY

months of Recurring charges. The original FRN was issued on June 14, 2005, sixteen (16) days prior to the original "End of Service" date of June 30, 2005...creating a physical impossibility. As a result the vendor contacted the SLD requesting the proper procedure for obtaining a twelve (12) month extension on the FRN. Those instructions were followed to the letter and an email was issued by the SLD (see attached) authorizing the vendor to proceed. However, as stated earlier, the revised FRN was completely contradictory to previous correspondences. Below you will find a copy of the time table for all SLD-Vendor-Springfield Public Schools correspondence / contact:

- *Form 471 # 433768 / 1207981 was filed for the year 07/01/2004 - 06/30/2005*
 - *The FCDL was issued on 06/14/2005 for \$1,468,923.00*
 - *The SLD was contacted immediately regarding the late award for 12 months of service and both SPS and the vendor were informed that that was not a problem as there was an automatic extension on the FCDL and that by filing a Form 500 to extend it through 09/30/2006 the funding could be utilized over the next 12 months.*
 - *The Form 500 was filed and an approval to proceed was issued on August 08, 2005*
 - *The contract was then sent to the city for enactment as City Ordinances forbid the processing of any contract for a given Fiscal Year prior to July 1st of that Fiscal Year and written confirmation of funding sources are secured. Note: The City of Springfield is currently under the oversight of a State Financial Control Board and all such contracts must additionally have their review and approval also. The contract was finalized on 10/27/05 after a number of modifications were implemented and returned to my office in early November.*
 - *The Form 486 was filed on November 14th as SLD regulations require that it be filed either:*
 - *Within 120 days of the FCDL*
 - *Or within 120 days of the Start of Service.*
- The service start date (noted on the 470 was 10/27/2005) and service was schedule to terminate 09/30/2006 for 11 month's of service. (A Form 486 cannot be filed until service starts, as that is the nature of the document, and service cannot start until all appropriate paperwork is completed.)*
- *Service Substitution filed on November 30, 2005 and approval was issued on December 05, 2005*
 - *SLD email noting insufficient funding issued on December 15, 2005 and Springfield Public Schools' email seeking clarification was issued immediately.*
 - *Numerous emails and phone calls occurred between December 15, 2005 and December 21, 2005 with a final email issued by Springfield Public Schools on December 22, 2005 indicating its intent to file an appeal.*
 - *All of the above was completed within constant communication between the SLD, the vendor and SPS either by phone, email, and/or FedEx shipments.*

Springfield Public Schools has filed all forms appropriately and in a timely manner. Furthermore, we have contacted the SLD on all concerns and followed their directions to the letter. Therefore we are requesting the following:

1. that the FRN be restored to the original amount as awarded on August 14, 2005;
2. that the twelve month timeframe, as originally requested, be re-schedule appropriately;
3. that the Service Substitution be re-instated as approved on December 05, 2005.

Should you have any questions, please contact my office. Thank you for your assistance in this matter.



Dr. Joseph P. Burke, Superintendent
Springfield Public Schools